

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

HODELL-NATCO INDUSTRIES, INC.,

08CV2755

Plaintiff,

vs.

June 15, 2015
10:50 a.m.

SAP AMERICA, INC., ET AL.,

Volume 1-PM

Defendants.

TRANSCRIPT OF JURY TRIAL PROCEEDINGS
BEFORE THE HONORABLE DONALD C. NUGENT
UNITED STATES DISTRICT JUDGE
AND A JURY

1 APPEARANCES:

2 For the Plaintiff: Christopher J. Carney, Esq.
3 Sharon A. Luarde, Esq.
4 P. Wesley Lambert, Esq.
5 Brouse McDowell
6 600 Superior Avenue East
Suite 1600
Cleveland, Ohio 44114
216-830-6830

7 For the Defendants: Gregory J. Star, Esq.
8 Michael John Miller, Esq.
9 Joseph M. Kelleher, Esq.
Alex H. Hayden, Esq.
10 Drinker Biddle & Reath
One Logan Square
11 18th & Cherry Streets
Philadelphia, PA 19103
215-988-2734

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14 Official Court Reporter: Susan K. Trischan, RMR, CRR, FCRR
15 7-189 U.S. Court House
801 West Superior Avenue
16 Cleveland, Ohio 44113
216-357-7087

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18 Proceedings recorded by mechanical stenography;
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1 MONDAY, JUNE 15, 2015, 10:50 A.M.

2 (Proceedings resumed in presence of the
3 jury as follows:)

4 THE COURT: Good morning again, ladies and
10:50:40 5 gentlemen. You already lost one. A couple more are
6 trying to work on your issues and trying to work on your
7 issue as well, and so we'll play it by ear if that's
8 okay.

9 Would you take that down so I can see the
10:51:01 10 jury? Yes. Now, next order of business will be the
11 opening statements of counsel. That means that the law
12 says each side may stand before you and give an overview
13 or an outline of what that lawyer thinks the evidence is
14 going to show during the course of the trial.

10:51:25 15 It's not evidence. You remember what I
16 said evidence was? Testimony of witnesses who take an
17 oath and appear here either in person or by video before
18 you; Exhibits offered and received into evidence;
19 stipulations or admissions.

10:51:41 20 At this point we've heard no evidence.
21 Correct? So if I asked you how to vote on this case,
22 Plaintiff versus Defendant, you'd have to vote in favor
23 of the Defendant. Why? There's been no evidence offered
24 against the Defendant whatsoever during the course of the
10:51:57 25 trial.

1 So you keep an open mind about that.

2 Now, then the Defense gets a chance, if
3 they want, they can make an opening statement as well.

4 Consider the opening statement for the
10:52:08 5 purpose and with the intent for which it is presented.
6 That is just to give you an idea what to expect as the
7 trial will progress in the course of the next few days.

8 What the lawyers say is not evidence. And
9 don't substitute what any lawyer says for what the actual
10:52:28 10 evidence is. The law allows the lawyers to make these
11 presentations hopefully to have you better understand the
12 evidence when it actually is presented during the course
13 of the trial.

14 So keep this in mind throughout the trial,
10:52:40 15 too. Whatever the lawyers say isn't evidence. And in
16 opening statements if they offer -- they're going to
17 show, like, demonstrative evidence and maybe some
18 documents they intend to offer into evidence, and they
19 can do that, but they run the risk at some point that
10:52:56 20 that document or that statement is not backed up by the
21 evidence, and that you won't have that to consider.

22 So are you with me on that? So you're to
23 take the opening statements for the purposes with which
24 they are intended and that's just to give you an outline;
10:53:11 25 not as a substitute.

1 So the Plaintiff having the burden of proof
2 is required to go first.

3 You may proceed.

4 MR. LAMBERT: Good afternoon, ladies and
10:53:37 5 gentlemen of the jury. My name's Wes Lambert, I was
6 introduced briefly at the beginning this morning. Pardon
7 for being all the way back here. I wish I could wander
8 around, but it's not going to work today so I'll be back
9 here at the podium addressing you, probably referring to
10:53:52 10 some events that you see on the timeline there.

11 I'll try to direct you to those events and
12 as we weave our way through the Plaintiffs' opening
13 statement.

14 Again my name's Wes Lambert, I'm with the
10:54:05 15 Cleveland, Ohio law firm of Brouse McDowell. I work with
16 Sharon and Chris at Brouse McDowell. We
17 represent -- it's our privilege to represent the
18 Plaintiff Hodell-Natco Industries, Inc. I want to give
19 you some background on Hodell-Natco.

10:54:20 20 Hodell-Natco is a northeast Ohio
21 family-owned company. Otto Reidl seated at the
22 Plaintiffs' table here, has been its CEO since 2011 and
23 served as its president from 1983 through 2010.

24 Otto's son, Kevin, seated next to Otto here
10:54:44 25 has served as Hodell's president since 2011. Hodell's

1 headquarters are located just down the road in Valley
2 View, Ohio, off Pleasant Valley Road. Hodell has been
3 part of the northeast Ohio community since 1983 and it
4 employs around 135 hard-working men and women.

10:55:02 5 Hodell's business, Hodell is in the
6 business of selling and distributing fasteners, chains
7 and bolts, and it prides itself on its outstanding
8 customer service.

9 That's how it separates itself from its
10:55:18 10 competitors.

11 And although Hodell is headquartered in
12 Valley View, it has warehouse distribution facilities in
13 Columbia, South Carolina, Reno, Nevada, Orlando, Florida
14 and St. Louis, Missouri and in Houston.

10:55:34 15 While Hodell's owners are family, it treats
16 its employees like family as well. Many of its employees
17 have been with the company for decades. Kevin Reidl will
18 testify that Hodell had traditionally shared 20% of its
19 pre-tax profits with its employees and not just with the
10:56:01 20 high level executives, but with every full-time employee,
21 from the people in the office to the people in the
22 warehouse pulling orders.

23 Now, I want to take you back to Hodell as
24 it existed in 2004. In 2014 Hodell-Natco was a thriving,
10:56:15 25 vibrant business. It historically was growing at a rate

1 of 13% annually. It was acquiring companies and merging
2 them into the business that it ran out of its northeast
3 Ohio headquarters.

4 In December, 2004, Hodell-Natco's workforce
10:56:33 5 was efficient. It was productive, and its workers were
6 happy. But, by 2009, Hodell would be on the verge of a
7 bank liquidation in financial peril, and despite the best
8 efforts of its loyal and hard-working employees, by 2009
9 Hodell would be unable to complete a planned acquisition
10:56:57 10 due to severe financial distress.

11 And by 2009, some of Hodell's key employees
12 were quitting. Why the sudden change? Why would a
13 thriving northeast Ohio business find itself taking a
14 nose dive into financial peril? Well, we intend to prove
10:57:19 15 that the answer to that is simple: Because Hodell was
16 misled into purchasing and implementing a software
17 program developed and sold by the Defendants, SAP America
18 and SAP AG. And I'll describe those two Defendants a
19 little bit -- in a little bit.

10:57:36 20 And beginning in 2003, Hodell was led to
21 believe that this software would provide enhanced
22 functionality, enhanced productivity, and enhanced
23 efficiency for its business. And it continued to be
24 misled about that into 2007 when it began using the
10:57:55 25 software.

1 And even when Hodell began using this,
2 software, and immediately began experiencing problems,
3 Hodell was led to believe that these problems could and
4 would be fixed by SAP.

10:58:09 5 And because Hodell made such a large
6 financial commitment to buy and implement this software,
7 and because a company Hodell's size can't make such a
8 large capital investment and then turn around on a dime
9 and throw it out, Hodell had to run this software program
10:58:26 10 for two years, and the two years Hodell was forced to run
11 that software program it, almost put Hodell out of
12 business.

13 The software that we're talking about is
14 SAP Business One. And, ladies and gentlemen of the jury,
10:58:43 15 we will prove that Otto and Kevin were lied to repeatedly
16 by the Defendants in this case and that these lies caused
17 Hodell to acquire, implement, and run Business One, the
18 software program that almost put it out of business.

19 Again, seated at the table with Chris,
10:59:05 20 Sharon and I are Otto Reidl and Kevin Reidl, and they're
21 going to testify in detail about the damage that this
22 software program caused Hodell's business and its
23 employees. You're going to hear about customer orders
24 that used to take minutes to complete under Hodell's old
10:59:24 25 software system now took hours to complete under the SAP

1 system.

2 You're going to hear about larger customer
3 orders that used to take hours to complete over the phone
4 under the old software system, now would take a day or
10:59:39 5 more to complete under the SAP system just to get one
6 order out the door.

7 The software system locked up multiple
8 times a day. A salesperson would be on the phone with a
9 customer taking down an order, the order would disappear
10:59:56 10 from the screen maybe an hour into it and they would have
11 to start over from the beginning.

12 Salespeople at one point resorted to just
13 writing down orders on a piece of paper rather than using
14 the SAP system.

11:00:08 15 Salespeople were forced to put aside
16 quoting customers and pursuing other opportunities just
17 to try to get the orders that it did have into the
18 system.

19 The life blood of a distribution company
11:00:26 20 like Hodell is the ability to manage its inventory. The
21 new software was supposed to do this seamlessly, and it
22 turned out it couldn't do this at all.

23 Now, as a result, Hodell couldn't keep
24 track of its inventory. It had to purchase extra
11:00:42 25 inventory just to try to make sure it had things on stock

1 that its customers needed.

2 It couldn't complete orders. It lost
3 orders altogether. It lost orders because it couldn't
4 respond to quotes timely enough, customers just went
5 somewhere else.

11:00:57

6 And you might be asking yourself how can a
7 piece of software cause this much disruption to a
8 company, right? How could a piece of software almost
9 ruin a business? And that's a reasonable question, and I
10 want to explain it to you.

11:01:15

11 Unlike software that you might buy for your
12 home computer from Best Buy or Target, Hodell relies upon
13 a software program called ERP software, Enterprise
14 Resource Planning Software. And what ERP software does,
15 it collects, stores, and it sorts data. It performs a
16 variety of functions for businesses like Hodell, managing
17 and tracking inventory, generating marketing leads,
18 tracking accounting activities, helping to ship products.

11:01:34

19 For Hodell to run effectively, for Hodell
20 to service its customers and for its employees to be able
21 to do their jobs, this ERP system must serve as the
22 backbone for Hodell's business and if it's not working,
23 Hodell's business can grind to a halt.

11:01:56

24 Business One, SAP Business One was
25 represented to Hodell as being a cutting edge piece of

11:02:13

1 ERP software, with the backing of the largest ERP company
2 in the world SAP. As you can imagine, a distribution
3 company like Hodell selling fasteners, chains and bolts
4 has thousands of different inventory items.

11:02:33 5 Hodell stocks thousands of different bolts,
6 chains, screws, nuts, things like that, and, in fact, it
7 has currently over 120,000 different inventory items in
8 its inventory and you might hear these referred to as
9 SKUs during this case, S-K-U-S.

11:02:53 10 This is why Hodell needs an ERP system that
11 can manage this inventory and respond to its customers'
12 needs.

13 For a long time prior to SAP, Hodell used
14 an inventory -- or an ERP system called FACTS, F-A-C-T-S.

11:03:09 15 In 2003, Hodell recognized that the FACTS system might
16 become outdated, and it started to look for a new ERP
17 system to replace FACTS and the ERP system Hodell
18 ultimately purchased was called SAP Business One. And
19 this decision was not made by Hodell and it was not made
11:03:28 20 by Otto and Kevin lightly because of the high cost and
21 large capital investment Hodell was making in this
22 software program and the effort it makes to implement it.

23 And you'll hear about that during this
24 case.

11:03:43 25 Hodell purchased 80 Business One licenses

1 for its users in December, 2004, pursuant to a
2 development agreement that it signed. And you can see
3 that reflected up on the timeline. Hodell purchased an
4 additional 40 licenses and signed it -- when it signed a
11:04:04 5 license agreement in December, 2005, and this license
6 agreement contained a warranty regarding the software
7 Hodell was buying.

8 In addition to the claims for fraud and
9 negligent misrepresentation we're going to be making
11:04:20 10 during this case, Hodell will present evidence that SAP
11 breached this warranty, including an admission from a SAP
12 Business One vice president that the software didn't
13 conform to this warranty.

14 We talked about Hodell. I want to talk a
11:04:35 15 little bit and give you some background on the Defendants
16 in this case.

17 As I've said before, Business One is an ERP
18 software system developed and distributed in the United
19 States by SAP AG and SAP America, Inc. and I'll refer to
11:04:52 20 them both as SAP. SAP claims to be the world leader in
21 enterprise applications in terms of software and
22 software-related revenue. It's headquartered in Waldorf,
23 Germany. SAP America is located just outside of
24 Philadelphia, Pennsylvania. The other set of Defendants
11:05:11 25 in this case are LSi-Lowery Systems, Inc. and The IBIS

1 Group, Inc. LSi and IBIS merged in 2004 and I'll refer
2 to them both as LSi.

3 Why is LSi involved in this case? Because
4 SAP doesn't sell Business One directly to its customers
11:05:30 5 through its own dedicated sales force. Instead, SAP
6 sells Business One through what it calls channel
7 partners, who it tells customers or potential customers
8 have unmatched expertise and are highly qualified, who
9 understand the specific challenges facing small and
11:05:50 10 mid-sized businesses.

11 SAP sold Business One through channel
12 partners who it said were certified by SAP to sell
13 Business One to end users like Hodell. Okay? And
14 instead, LSi was the channel partner that sold Business
11:06:06 15 One to Hodell.

16 LSi and IBIS were also named as Defendants
17 in this case, but they have stopped defending themselves
18 and they aren't here today.

19 The evidence you will hear in the coming
11:06:20 20 days will establish that Hodell-Natco was the victim of a
21 fraud designed to induce it to purchase, implement, and
22 continue running Business One. The evidence will show
23 that Hodell was told that Business One could support its
24 initial need of 120 users and that it could support
11:06:39 25 Hodell's planned growth to 300 users.

Those statements were false. Business One was not designed to support 300 users, it wasn't even designed to support the 120 that Hodell initially bought. It was designed to support 50 or less.

The evidence will show that SAP and its business partner fraudulently or at best negligently misrepresented this software to Hodell. At best, at best, SAP and its business partner failed to follow the reasonable standard of care in the representations they made to Hodell about this software and whether it would be appropriate for Hodell's business.

But we believe the evidence is going to proceed beyond mere negligence, into the realm of intentional and reckless wrongdoing. The evidence will show that when Hodell purchased Business One in December, 2004, SAP knew or was reckless in not knowing that Business One would never work for Hodell. But no one at SAP ever told Otto or Kevin this.

Let's start back at the beginning of that timeline. Where did Hodell get the idea that Business One could support 120 or even 300 users? Let's talk about some of the things that were said to Hodell, said to Otto and Kevin about Business One that made them buy it.

You're going to hear testimony that Otto

1 and Kevin received several verbal communications from
2 SAP's channel partners, not just LSi, to channel partners
3 about Business One. Business One was first marketed to
4 Hodell by a company called American Express
11:08:29 5 Business & Tax services. Amex was a channel partner, an
6 SAP channel partner, just like LSi, and pursued the
7 Hodell sale and opportunity with full knowledge of the
8 number of users that Hodell needed and expected to grow
9 to over time.

11:08:44 10 Otto Reidl will testify that he was assured
11 by American Express that Business One could support 300
12 users. And Mr. Reidl, similar to what we'll talk about
13 with LSi, was led to believe that the status of Amex as a
14 channel partner for SAP meant that the statements made by
11:09:04 15 Amex were also those of SAP.

16 In 2004, the sale of Business One to Hodell
17 was transitioned to LSi and its owners, Dan Lowery and
18 Dale Van Leeuwen. It was at this time that LSi began
19 marketing Business One to Hodell, and LSi proposed that
11:09:27 20 it would develop an add-on product known as In-Flight
21 Enterprise that would provide some additional
22 functionality to the base Business One package.

23 Representatives of LSi, including Dan
24 Lowery and Dale Van Leeuwen, will testify during this
11:09:43 25 trial and they're going to openly admit to you that they

1 told Hodell that Business One could support its need for
2 300 users.

3 SAP is going to claim that it didn't have
4 any direct contact with Hodell during the sales process.
11:10:03 5 We believe the evidence is going to show you otherwise,
6 and, in fact, it is Hodell's claim in this case that LSi,
7 when selling Business One to Hodell, was acting as SAP's
8 agent in the representations that they made to Hodell
9 about Business One.

11:10:20 10 As I stated earlier, SAP didn't have its
11 own sales force to sell Business One to customers like
12 Hodell. Instead, it used business partners or channel
13 partners like LSi as its sales force and sent LSi out
14 into the community to sell Business One on its behalf.

11:10:38 15 And, in fact, LSi is going to openly admit
16 during this case that they were acting as SAP's agent.
17 Let's look at what LSi has said about its status as SAP's
18 agent. This is a statement by LSi. "In summary, each
19 and every representation made by these answering
11:10:57 20 Defendants," meaning LSi, qualification was a recitation
21 of information supplied by SAP, either in writing,
22 verbally, or by actions of SAP." Please excuse the typo.

23 "As they said they would, SAP held us out
24 as their partners and told us we were partners. SAP held
11:11:16 25 many conferences and SAP told us to make it clear SAP was

1 the developer, owner and responsible for the product
2 sold. The only information we ever communicated to
3 customers and potential customers with regard to the SAP
4 product was that which SAP authorized these Defendants to
11:11:31 5 communicate to third parties including Plaintiff."
6 Meaning Hodell.

7 "SAP stated their product could run from 5
8 to 500 employees. LSi made no independent warranties or
9 promises as to the performance or other applicability of
11:11:47 10 the Business One product separate and apart from whatever
11 was contained in the literature supplied or made
12 available by SAP. Everything we did on this project was
13 done with the knowledge and was permitted and, in fact,
14 promoted by SAP. In fact, we all referred to this as the
11:12:05 15 Hodell-Natco SAP project."

16 In addition, SAP encouraged LSi and other
17 channel partners to use SAP's name and logo on their
18 marketing literature and in the sales process to
19 potential customers like Hodell.

11:12:22 20 As just one example, this is a document
21 called an SAP business partner co-op marketing guide
22 given to channel partners and business partners like LSi.

23 It states inside, as you'll see, "The SAP
24 business partner program was created to ensure maximum
11:12:42 25 market penetration for SAP and our partners."

1 There's a section further down in that
2 document called leveraging the SAP brand. And it states,
3 I don't know if it's blinking on your screen, it's
4 blinking on mine, "The SAP brand has significant value.
11:13:05 5 As a member of our partner program, we encourage you to
6 leverage that brand name for recognition, quality
7 standards, and general market awareness."

8 Further down in that document it states,
9 "SAP Business One partners may use the SAP business
11:13:22 10 partner logo on all appropriate marketing materials
11 related to the Business One product."

12 Armed with this authorization from SAP, LSi
13 did in fact use SAP's logo on its marketing materials.
14 This is one example, a document sent by LSi to Hodell
11:13:51 15 during the sales process with SAP's name and logo on it.

16 These are just a few of the examples we're
17 going to show you, showing that LSi held SAP out as its
18 partner and business agent. That's why Hodell reasonably
19 believed they were acting on SAP's behalf selling
11:14:14 20 Business One to it, with SAP's authorization. Hodell was
21 led to believe that the statements of LSi were also those
22 of SAP.

23 Armed with the backing of the SAP name and
24 the SAP logo and its status as a business partner of SAP,
11:14:29 25 LSi continued selling Business One to Hodell throughout

1 2004 and 2005. And I'll give you some examples of some
2 of the things they said to Hodell about Business One.

3 Otto and Kevin are going to testify that
4 they were assured repeatedly in 2004 and five through
11:14:48 5 representations of LSi that Business One could
6 accommodate Hodell's initial need of 120 users and its
7 planned growth to 300 users.

8 Dan Lowery and Dale Van Leeuwen, as I said
9 earlier, will admit on behalf of LSi to telling Hodell
11:15:06 10 that Business One could support 120 and 300 users. They
11 will admit that.

12 They will also testify that SAP was very
13 involved in the sales process to Hodell, and although SAP
14 is going to argue that they didn't communicate to Hodell
11:15:21 15 directly, Mr. Van Leeuwen will testify that SAP
16 communicated to Hodell through LSi.

17 Mr. Van Leeuwen will testify that the
18 Hodell sale was not done without the direct knowledge of
19 SAP. SAP sales director Dan Kraus was actively involved
11:15:39 20 in the Hodell sale, helping LSi to determine that this
21 was the right software product for Hodell.

22 Mr. Van Leeuwen will testify that he was
23 told by SAP employees that Business One could support 3
24 to 500 users and based upon that statement, he turned
11:16:00 25 around and told Hodell that it would be perfectly

1 appropriate for Hodell's need of up to 300 users.

2 And although SAP claims it had no
3 communication with Hodell during the sale, the evidence,
4 the documented evidence will show otherwise. Hodell
11:16:15 5 received marketing literature published by SAP talking
6 about Business One, talking about how great Business One
7 will work for his business and for his company.

8 I want to show you a couple pieces of the
9 marketing literature Hodell received. In the course of
11:16:31 10 Hodell's discussions about whether to buy the Business
11 One, Hodell received a document called an SAP Business
12 One brief. SAP solution brief. This is a marketing
13 piece published by SAP.

14 And then in addition to the other
11:16:48 15 statements made to Otto and Kevin in here, the document
16 states, "Whether you have 5 employees or 500, the
17 solution helps emerging businesses streamline their
18 operational and managerial processes."

19 Another document I want to show you that
11:17:04 20 was given to Hodell during the sale was called an SAP
21 Business One white paper. Hodell received this from
22 SAP's channel partner. This document references in two
23 separate places the support of an unlimited number of
24 simultaneous user transactions.

11:17:23 25 Hodell reasonably relied upon these verbal

1 and written representations by SAP and its business
2 partner in deciding whether to purchase Business One.
3 LSi also relied upon the same or similar documents in
4 marketing Business One to Hodell.

11:17:41 5 SAP is going to argue that it had very
6 little information about Hodell during the sales process
7 and it's going to argue that it didn't really know much
8 about Hodell until much later when Hodell began
9 experiencing problems later in 2007.

11:17:57 10 I want to show you a couple pieces of
11 evidence that are going to show otherwise. This is an
12 e-mail sent by LSi's Dan Lowery to Dan Kraus of SAP in
13 July of 2004, before Hodell signed any agreements to
14 acquire Business One. It identifies a sales process Dan
11:18:17 15 Lowery is undertaking for the sale of 150 user licenses
16 to two large close prospects. Again it identifies 150
17 user licenses and Dan Lowery is going to testify that one
18 of these prospects was Hodell.

19 There's nothing in this e-mail chain from
11:18:34 20 Dan Kraus or anyone else at SAP expressing any concern to
21 Dan Lowery that he's going to be selling 150 user
22 licenses to a customer. Instead, Dan Kraus responded
23 that he can help LSi land these prospects with the
24 promise of a larger SAP relationship.

11:18:52 25 The next document I want to show you is

1 another e-mail sent by Dan Lowery to Dan Kraus in
2 November of 2004, right before Hodell signed the
3 development agreement with LSi. It attaches a
4 spreadsheet proposing to sell Hodell 80 users for
11:19:13 5 Business One, and it tells Mr. Kraus that Hodell is
6 growing and could double in users within a year, sooner,
7 bringing it to 160.

8 There was no response indicating any
9 concern by Mr. Kraus or anyone else at SAP that
11:19:30 10 Mr. Lowery was selling 80 user licenses to a potential
11 customer or that it could be selling 160.

12 And despite LSi providing this information
13 to SAP about the size and scope of the Hodell deal, no
14 one at SAP ever conveyed to Hodell that it was too big
11:19:49 15 for Business One.

16 Rather, SAP internally celebrated the
17 potential sale of Business One to Hodell. They referred
18 to it as a very high profile account that they were
19 trying to sell in the midwest.

11:20:04 20 In fact, we believe the testimony will show
21 that Hodell was the single largest sale of Business One
22 in the United States at the time. Despite these e-mails
23 that we've seen, despite LSi's communications with SAP
24 about the Hodell sale, no one told Hodell that the
11:20:23 25 Business One software hadn't even been tested in the

1 environment in which it would be implemented at at
2 Hodell.

3 The testing that had been done by SAP to
4 this point is reflected on the chart that you're seeing
11:20:34 5 now. It shows a high end testing environment of 30
6 users, and we know that Hodell was going to be going live
7 with 120 users and planned to grow to 300, ten times that
8 amount.

9 It shows the high end inventory items of
11:20:52 10 60,000. Hodell's was going to be much greater than that,
11 more than twice. Again never communicated to Hodell
12 before it purchased Business One.

13 Instead, SAP's marketing literature
14 referred to Business One as a mature, robust piece of
11:21:09 15 software that had been installed in thousands of
16 companies worldwide.

17 And aside from the lack of testing in an
18 environment anywhere near Hodell's, the evidence will
19 show that Business One wasn't even designed to be sold to
11:21:23 20 companies the size of Hodell. You will hear testimony
21 from current and former SAP employees that Business One
22 was designed for much smaller user counts and transaction
23 volumes than Hodell was going to be using.

24 Let's take a look at what some of SAP's own
11:21:41 25 documents show. This is a SAP Business One statement of

1 direction published in 2005 by SAP. It's an SAP internal
2 document published before Hodell signed the license
3 agreement with SAP and before it went live on the
4 software.

11:22:00 5 It states in there that it's not to be
6 distributed to customers, and the document states, "In
7 future releases, SAP Business One will focus on the needs
8 of businesses with 10 to 100 employees." Much lower than
9 the 5 to 500 employees referenced in the marketing
11:22:21 10 literature provided to Hodell.

11 The next document is an SAP Business One
12 statement of direction published in 2006, right after
13 Hodell signed the license agreement. This document again
14 written by SAP says that it's supposed to be -- it must
11:22:39 15 not be distributed to customers. And let's look at what
16 this document says.

17 "SAP Business One is optimized for
18 performance with up to 50 concurrent users."

19 No one from SAP or from LSi ever told
11:22:56 20 Hodell that Business One was optimized for performance
21 with up to 50 concurrent users. Instead, they sold
22 Hodell 120, and they knew Hodell expected to grow to 300.

23 Another document from an SAP sales meeting,
24 we'll show you, it was considered a red flag if a
11:23:20 25 customer might purchase Business One, will the number of

1 users exceed 30? No one ever told Hodell it was a red
2 flag for them to be purchasing a user count over 30,
3 which is ten times less the amount that it was told the
4 software could go to, and one-fourth the amount of the
5 licenses that it would be going live with initially.

6 Rather than inform Hodell, either prior to
7 signing the development agreement in 2004, prior to
8 signing the license agreement in 2005, of these basic
9 facts we just went over, rather than informing them of
10 that, SAP permitted Hodell to purchase and implement and
11 run Business One under the false belief created by SAP
12 and its business partner that Business One could support
13 Hodell's initial user count of 120 and its growth to 300.

14 Let's talk about what happened to Hodell as
15 a result of this sale.

16 The date that a customer begins using a new
17 ERP system is called the go-live date. The testimony
18 will establish, and you can see it on that timeline, the
19 date that Hodell went live on Business One was March 7th,
20 2007. And it immediately began having problems with the
21 software. As I described a little bit earlier, the
22 software was so slow that people were having trouble
23 inputting orders and accessing information off of it.
24 Hodell could barely carry on its business. The system
25 would freeze, it would crash. The salespeople couldn't

1 respond to customers. They couldn't quote orders.
2 Hodell's inventory was out of control. It had no idea
3 what it had in stock. Hodell was in real trouble.
4 Hodell was in real trouble.

11:25:10 5 And many times, a salesperson would spend
6 hours on the phone with a customer taking down an order
7 just to have it disappear off the system, the system
8 would crash. And they'd have to start all over again.

9 And as I said before, salespeople at one
11:25:25 10 point just would write down the orders on a piece of
11 paper.

12 You're going to hear evidence that SAP was
13 notified immediately of the problems Hodell was having.
14 It was notified immediately that these problems were a
11:25:41 15 major strain on Hodell's business, and that it was
16 causing Hodell to lose money.

17 One of the SAP employees that was notified
18 immediately is named Udi Ziv. Udi Ziv was the head of
19 the development team for SAP Business One. He reported
11:26:02 20 directly to SAP's Board of Directors. He was notified a
21 few weeks after Hodell went live on Business One that
22 Hodell was having severe performance issues with the
23 software.

24 He admitted that Hodell was outside any
11:26:19 25 sane Sweet Spot for Business One. Let's look at what the

1 developer of this product admitted.

2 "Someone had sold to the wrong customer,
3 which is way above any sane Business One Sweet Spot, 120
4 users, and obviously they are experiencing severe
11:26:39 5 performance problems."

6 I want you to know that there's no mention
7 in that e-mail at all of the In-Flight Enterprise
8 program.

9 Mr. Kraus, who Udi Ziv sent that e-mail to,
11:26:56 10 that internal e-mail, exchanged a few e-mails with
11 Mr. Ziv. Mr. Ziv again, the developer, the head of the
12 development team for this product, told Mr. Kraus "Too
13 bad we didn't stop the implementation before it started."

14 The evidence will show that a conference
11:27:18 15 call was then scheduled to be held between Hodell, SAP
16 and LSi a few days later after those e-mails were sent.
17 The conference call was going to be held on April 17th,
18 2007, and I'm going to refer to that date several times.
19 You can see it on that, on that chart. It's going to be
11:27:35 20 an important date. And that's why a few days before that
21 phone call, Mr. Ziv again chimes in, again the head of
22 SAP Business One development team, and here's what he
23 said internally again to his SAP colleagues addressing
24 the Hodell-Natco implementation. "Someone needs to tell
11:27:58 25 the partner about the Business One Sweet Spot and that an

1 environment of 120 users and growing is nowhere near it.
2 Due to the size of the customer, I expect this not to be
3 the last performance issue they encounter."

4 No mention of In-Flight in that e-mail
11:28:12 5 either.

6 The evidence will show that Udi Ziv, the
7 head of the SAP Business One development team, wasn't the
8 only person who admitted that Business One shouldn't have
9 been sold to Hodell and wasn't going to work. No, the
11:28:26 10 evidence will show that the head of SAP -- the SAP's
11 director of business development, a gentleman by the name
12 of Ralf Mehnert-Meland, made the same admission the next
13 day on April 16th, 2007.

14 He admitted "Hodell just has too much data.
11:28:45 15 SAP Business One cannot handle it. There's no fix in
16 sight. I believe we need to find a way to get the
17 customer off Business One."

18 No mention of In-Flight in that e-mail
19 either.

11:28:55 20 The next day, the April 17th phone call I
21 mentioned earlier, was held. No one on that phone call
22 told Hodell that the head of SAP's Business One
23 development team had concluded and admitted that Hodell
24 was outside any sane Business One Sweet Spot. No one
11:29:14 25 told Hodell on that call that its implementation should

1 have been stopped before it started. And no one told
2 Hodell on that call that it had too much data, that there
3 was no fix in sight, and that it should find a way to get
4 off Business One. Not said.

11:29:30 5 Instead, after that call, SAP continued
6 exchanging more internal e-mails about the Hodell
7 implementation, making the same admissions. These
8 e-mails further confirm that Business One never should
9 have been sold to Hodell. This is an e-mail sent by Ralf
11:29:50 10 Mehnert-Meland right after that April 17th call,
11 admitting, "There is no way Business One will work for
12 this customer. We need to find a way to move them on."

13 This is another e-mail sent by Dan Kraus
14 the same day as that phone call. Dan Kraus was SAP's
11:30:08 15 former vice president for the Business One division. He
16 stated, "We simply need to figure out if there is a
17 solution in A1 for this customer." A1 is another SAP
18 product. "Or if we can just refund the license fees.
19 There is no go-for-it pact here with Business One."

11:30:27 20 That night Mehnert-Meland replied again to
21 the same e-mail chain, and these are all internal
22 e-mails. Hodell asks the right question today: Did we
23 buy the wrong solution with SAP Business One. Based on
24 what we know now, the answer is yes.

11:30:42 25 And although Hodell did ask the right

1 question, it didn't get the answer because no one on that
2 call on April 17th told Hodell any of that information.
3 No one bothered to pick up the phone after that call and
4 tell Hodell any of that information.

11:30:58 5 Rather, SAP continued its internal dialogue
6 admitting that Business One was never going to work for
7 Hodell. This is an e-mail sent by Dirk Boessmann, a
8 member of SAP's development team in Germany, who reported
9 to Udi Ziv. This was sent in May of 2007. And he told
11:31:21 10 them internally, "You have to tell them with a target of
11 300 users, they do not have the right product out of the
12 SAP portfolio. If they continue to discuss with me, they
13 are just losing time and money. From my perspective, it
14 is now time to be honest with the customer."

11:31:38 15 But SAP strung Hodell along, continued to
16 let it keep losing time and money. It still didn't tell
17 Hodell that Business One was never going to work for it.
18 Instead, during this same time frame, SAP and its
19 business partner, LSi, were painting a very different
11:31:57 20 picture to Hodell about its Business One implementation.

21 We just looked at several e-mails, SAP
22 internal e-mails that SAP didn't send to Hodell during
23 this time frame, but let's look at a few of the e-mails
24 that SAP and LSi did send to Hodell during this same time
11:32:17 25 frame.

1 This is an e-mail sent by Paul
2 Killingsworth of SAP to Hodell in May of 2007, a few
3 weeks after Mr. Ziv's, Udi Ziv's e-mail saying Hodell was
4 outside of any sane Business One Sweet Spot. It tells
5 Hodell that SAP is working closely with LSi to alleviate
6 its problems. He asks Hodell to hold off on discussing
7 the viability of Business One until a patch is installed
8 at the company.

9 And then he says "Functionally, the product
10 with the additions of In-Flight and Radio Beacon is an
11 outstanding business solution for you and your company."

12 The next document is another Paul
13 Killingsworth e-mail sent in June of 2007. This e-mail
14 was sent several weeks after Dirk Boessmann's e-mail
15 saying that it was time to be honest with the customer,
16 and it was sent almost two months after Udi Ziv's e-mail
17 saying Hodell was outside any sane Business One Sweet
18 Spot.

19 He discusses the -- the e-mail discusses
20 the performance improvements in SAP's latest release of
21 Business One and it states to Hodell, "Nonetheless, it is
22 reasonable to believe that you will experience
23 significant performance improvements in many areas with
24 SAP Business One in 2007 when it is implemented at
25 Hodell-Natco."

1 Nothing in this e-mail about Hodell being
2 outside any sane Sweet Spot for the product. Nothing in
3 this e-mail about there being no go-forward path for
4 Business One. Next document is also an e-mail sent by
11:33:54 5 LSi SAP's channel partner in '07, three months after Udi
6 Ziv's e-mail, two months after Dirk Boessmann's e-mail,
7 talking about working closely with SAP in performance
8 areas, and where they can see potential enhancements.

9 As you can see on this timeline, that
11:34:09 10 continued for eight months, as Hodell continued to lose
11 time, continued to lose control of its inventory,
12 continued to lose money. And finally after eight months
13 after Hodell went live on the Business One software, the
14 evidence will show that on November 16th, 2007, SAP
11:34:27 15 finally did tell Hodell that Business One was never going
16 to work for it.

17 This e-mail was sent eight months after
18 Hodell went live on Business One. It was sent seven
19 months after Udi Ziv's e-mail saying that Hodell was
11:34:41 20 outside any sane Business One Sweet Spot. It was sent
21 six months after Dirk Boessmann's e-mail saying it was
22 time to be honest with the customer. And it states that
23 SAP has come to the conclusion that there is no change we
24 can make on our side that would result in a material
11:34:56 25 improvement.

1 This was the first time anyone at SAP ever
2 communicated to Hodell that Business One wasn't going to
3 work for it. And as we've seen, SAP knew this all along.

4 And so when Hodell was finally told
11:35:12 5 Business One wasn't going to work, Kevin and Otto had to
6 commence yet another search for another ERP system to
7 replace Business One. They had to spend several months
8 searching for a new program that they hadn't budgeted for
9 that was going to cost them a lot of money. They had to
11:35:33 10 spend another year paying for and implementing that new
11 ERP system. They had to spend another million dollars
12 they had not budgeted for to replace SAP Business One,
13 all at a time when its business and its employees and its
14 bottom line were already suffering.

11:35:48 15 Let's talk about the financial impact this
16 can have on a company. How does it impact a business
17 when it can't effectively take and process orders? How
18 does it affect a business when it can't get quotes to
19 potential customers, when it can't track its inventory,
11:36:08 20 when its expenses are sky rocketing? Kevin and Otto will
21 testify the whole time Hodell was using Business One, it
22 was limping along waiting on SAP to fix its software.
23 And the evidence will show that SAP knew Hodell was
24 limping along and continued to let Hodell limp along so
11:36:27 25 they can try to position itself to sell Hodell another

1 SAP program in place of Business One.

2 Hodell has filed this lawsuit and at the
3 conclusion of the evidence in this case Hodell is going
4 to ask you for a verdict, for a substantial amount of
11:36:44 5 money.

6 But Otto Reidl is going to testify that
7 this is a conservative calculation. That Hodell's -- the
8 damages Hodell is going to seek in this case are
9 conservative to what Hodell really lost.

11:37:00 10 And, in fact, the implementation of SAP
11 Business One didn't just fail, ladies and gentlemen; it
12 almost destroyed Hodell-Natco and it almost put them out
13 of business.

14 You're going to hear testimony from Otto
11:37:16 15 and Kevin that Hodell-Natco was in such dire financial
16 condition that its bank was looking at them as a
17 potential liquidation candidate.

18 All put in motion by the fact that this
19 software program that Otto and Kevin bought to run their
11:37:33 20 business, to make their employees' lives easier, to make
21 their employees more efficient and productive was, simply
22 put, misrepresented to them.

23 I'm almost done here but I want to talk
24 about a couple more things. SAP will likely argue that
11:37:49 25 Hodell can't show that it lost any particular customer,

1 any particular order because of the SAP Business One
2 system.

3 This is a straw man argument and it is also
4 untrue. The evidence will demonstrate that SAP was
11:38:05 5 well-aware that the Business One implementation was a
6 failure at Hodell and Hodell was hemorrhaging money as a
7 result.

8 Second, it's very difficult to quantify
9 particular lost customers and particular lost orders that
11:38:21 10 a customer is placing with a competitor because you can't
11 quote them in time, particularly when the software they
12 would use to make that determination is running so slowly
13 and crashing so often, you can't even use it.

14 SAP is also going to likely argue that in
11:38:37 15 2007, 2008, Hodell had the highest gross sales numbers of
16 any time during the company's history but gross sales are
17 just one aspect of a company's financial performance.
18 It's the bottom line that matters. Gross sales are just
19 what you take in before you factor in things like
11:38:54 20 expenses and things like that.

21 Otto will testify that Business One caused
22 Hodell's expenses to sky rocket.

23 Kevin and Otto will testify that Hodell is
24 still trying to recover to this day from the failed
11:39:08 25 Business One implementation. It's still trying to

1 recover from losing money at a time when it could ill
2 afford to do so, and it's still trying to recover from
3 almost going out of business. So this is a case about a
4 software company that intentionally oversold the
11:39:24 5 capabilities of its product or, just as bad, just as bad,
6 didn't know the limitations of that product when they
7 sold it to Hodell.

8 And even with Hodell experiencing severe
9 business disruption, SAP concealed the truth and strung
11:39:41 10 Hodell along.

11 Ladies and gentlemen of the jury, on behalf
12 of Hodell-Natco I want to thank you for your service in
13 this case. I want to thank you in advance for paying
14 close attention to the evidence and the testimony of the
11:39:53 15 witnesses that will be presented.

16 Thank you.

17 THE COURT: Thank you, Mr. Lowery.

18 Could you take that down then?

19 MR. LAMBERT: Yes.

11:40:06 20 THE COURT: Ready, Mr. Star?

21 MR. STAR: Yes, we have a couple technical
22 things to set up.

23 THE COURT: Okay.

24 MR. STAR: If you don't mind, could we have
11:40:16 25 a five-minute break to get the things set up and the jury

1 might as well?

2 THE COURT: You're good. Stand and stretch
3 if you want.

4 (Pause) .

11:46:37 5 THE COURT: Okay. You can have a seat.

6 I neglected to mention this before, before
7 the beginning of the opening statements, but LSi-Lowery
8 Systems, you heard that term, and IBIS are not Defendants
9 in this case. The issue in this case for you to decide
11:46:52 10 is the Plaintiff versus this Defendant. Okay?

11 You may proceed.

12 MR. STAR: Thank you, Your Honor.

13 MR. MILLER: We have a technical issue,
14 Your Honor. Our operator will be here in just one
11:47:07 15 moment.

16 THE COURT: We hope.

17 MR. MILLER: We're not going to leave the
18 premises. Do you mind if I step out?

19 THE COURT: Go ahead.

11:47:16 20 MR. MILLER: Thank you.

21 THE COURT: Technology is wonderful when it
22 works. When it doesn't, you want to pull your hair out.

23 MR. STAR: Thank you, Your Honor.

24 Ladies and gentlemen, you heard Hodell's
11:47:52 25 side of this story and as I'm sure you can appreciate,

1 like everything else in life, there are two sides to it.

2 There are pieces of this case that Hodell
3 didn't tell you about and really doesn't want to talk
4 about.

11:48:04 5 I'm going to walk through a lot of that
6 today.

7 Let me just tell you a little bit.

8 IBIS/LSi, they were not SAP's agent. They were acting
9 for and on behalf of Hodell. These companies were in a
11:48:23 10 joint venture together. They became development partners
11 with a plan to build a custom software application. It
12 wasn't SAP's product. It was theirs.

13 And their plan was to resell it for a
14 profit.

11:48:35 15 Hodell wants you to believe SAP was
16 involved in their sale process, that SAP made promises
17 that Hodell could have 300 or 500 users on its system.

18 I was a bit surprised actually to hear
19 Hodell say to you that SAP was directly involved because
11:48:55 20 we think there's no evidence of that. SAP's witnesses,
21 they'll tell you they knew next to nothing.

22 I'm going to show you some documents that
23 will prove that.

24 This was a deal between Hodell and
11:49:09 25 IBIS/LSi, and their deal was to develop a brand new

1 software that nobody else in the world had.

2 Hodell wants to tell you that SAP's
3 Business One product was a failure, it was a bust. They
4 say it didn't work. Well, the evidence is going to show
11:49:27 5 no matter how much they don't like it, they used it for
6 two years, two full years. Think about that. They used
7 our software for two full years.

8 And what happened when they used that
9 software? You heard them mention at the tail end, they
11:49:42 10 had their most successful financial performance ever on
11 our software. They're going to try to tell you they had
12 lost customers, lost sales, things they couldn't share.
13 I'm going to tell you right now you will see scant
14 evidence of that, very little evidence of that at all.

11:49:59 15 What you're going to see is their own
16 financial records proving they had their highest gross
17 sales ever, ever. They were the most productive ever
18 when they ran our software. Those are unrefutable facts.
19 They come from their own records.

11:50:12 20 They also want to tell you Business One
21 simply couldn't support the number of users they had.
22 They will tell you they are a small company, that
23 Business One really couldn't even work for them. We're
24 going to show you evidence that that's simply not true
11:50:31 25 either.

1 Before they bought our software and
2 certainly today, there were many much larger companies,
3 companies that you'll all know the name of when I show
4 you some of these slides later on, companies like Loreal
11:50:42 5 the cosmetics company, Chevron, oil and gas manufacturer,
6 they run Business One and they have thousands of users.

7 Hodell had 80. Business One today is a
8 very successful product and it's not at all the kind of
9 product Hodell wants to tell you it is.

11:51:00 10 Hodell focused a tremendous amount of time
11 on e-mails from people like Udi Ziv, right? You heard
12 his name. I'm going to come back to that. I'm going to
13 walk you through what really happened and then I'm going
14 to come back and I'm going to talk about those e-mails
11:51:13 15 from Mr. Ziv and others. I'm going to put them in their
16 proper context. You're going to realize the evidence
17 will show Mr. Ziv and the other people at SAP, they were
18 not being told the truth.

19 Hodell wants you to believe that SAP
11:51:27 20 somehow was lying. We're going to show SAP was told
21 nothing or very little about what was going on, and
22 Mr. Ziv certainly didn't know the real details.

23 When the dust settled after Hodell went
24 live on this software, and people from SAP who hadn't
11:51:44 25 been involved at all up to that point actually had a

1 chance to investigate and to assess what was going on.
2 Things were much different than what Hodell wants you to
3 believe. They weren't dire at all.

4 The evidence is going to show SAP, although
11:52:01 5 it hadn't been involved in their own custom software
6 project, devoted significant resources and went into
7 Hodell and put computer patches, software patches to fix
8 some of the problems they were having and their
9 performance improved significantly; to the point, ladies
11:52:18 10 and gentlemen, that by the fall of 2007, some six months
11 after they went live, there were really no noticeable
12 problems at all.

13 One final point. They want to suggest to
14 you that SAP lied, right? That's a pretty serious
11:52:37 15 accusation. And what they're going to tell you is
16 particular people employed by SAP lied to them.

17 Those people will be here. They will
18 testify. You'll get a chance to look those people in the
19 eye and figure whether they were telling the truth or not
11:52:51 20 and what they need to establish to you is that SAP was
21 intentionally misleading Hodell, that we wanted to harm
22 Hodell. You're not going to see any evidence that SAP
23 was motivated in any way, shape or form to want to harm a
24 company like Hodell. You heard them say it. SAP is one
11:53:09 25 of the largest computer software companies in the world.

1 What we sold to them was our least
2 expensive software product. We didn't upsell them with
3 more expensive software. They bought our least expensive
4 software product.

11:53:23 5 And they used it for two years
6 successfully.

7 Let me talk to you a little bit about SAP
8 and Business One itself. Would you guys mind throwing up
9 some of those monitors so we can take a look? I want to
11:53:39 10 have a couple demonstratives up here so you can refer to
11 some facts. We've been living with this case for five,
12 six years now and you're going to hear a lot of different
13 names and you're going to hear a lot of different dates.
14 Put it over here. Yep, that's fine.

11:53:56 15 I'm going to leave these up and you can
16 refer to them.

17 Right over here is fine. Yep, thanks.
18 That will work.

19 Let me just touch on this a little bit.
11:54:13 20 It's going to be very difficult for you all to keep track
21 of the names of the different witnesses and who they work
22 for. I'm going to leave this up here. You've already
23 heard about the folks from Hodell, Otto and Kevin Reidl.
24 You will also hear from a man named Terry Phillips. He
11:54:31 25 was Hodell's own internal IT project manager. I'm going

1 to talk to you about him a little bit later. From LSi,
2 they are separate independent companies from SAP.
3 There's Dan Lowery and Dale Van Leeuwen. You'll hear
4 those names over and over again. American Express, I'll
11:54:47 5 talk about a woman named Penelope Vitantonio and I'll
6 refer back to this.

7 Let me go over a couple basic facts that
8 you're going to hear. There's so many dates and
9 different people in this case, we tried to distill this
11:54:57 10 down to what we thought might be most helpful for you
11 right now.

12 Let me point out a couple things. Business
13 One was first sold in the United States in 2003. In
14 December of 2004, Hodell and IBIS/LSi, not SAP, Hodell
11:55:15 15 and IBIS/LSi sign a contract between themselves. I'm
16 going to talk about it in a little bit. And that
17 contract is for the development of custom software that I
18 keep referring to.

19 And it's not until December of 2005 that
11:55:29 20 Hodell actually purchases software from SAP. Now, it
21 might get a little bit confusing. Hodell's counsel told
22 you that Hodell actually bought software from SAP back
23 here in December of 2004, and for whatever reason in this
24 case, we've just never been able to agree on what should
11:55:46 25 be a pretty simple fact.

1 I'm going to show you the actual documents.
2 I'm going to show you a purchase form that came into SAP
3 in December of 2005, showing that's when Hodell first
4 bought our software; not back here in December of 2004.

11:55:59 5 And it's very important to recognize that
6 that's the date they bought our software and I'll explain
7 why.

8 Let me talk to you a little bit more about
9 Business One. Business One, as Hodell's counsel told
11:56:12 10 you, is what's called Enterprise Resource Planning
11 Software. It's not the kind of software you go to the
12 store and buy. It's not what you run on your own laptop.
13 It does business functionality, accounting, financial
14 functions, those sorts of things.

11:56:25 15 And every Business One customer, this is
16 undisputed, every Business One customer gets the same
17 software. Okay? This is like when you go to Office Max
18 or something like that and you buy Microsoft Word or
19 Microsoft Windows, you get the same disk with the same
11:56:45 20 software code, and that's the product. Same thing
21 happens with Business One. It's the same software for
22 every customer.

23 But, Business One can be customized. It
24 can be customized with what are called add-on products.
11:56:58 25 This sounds a little bit complicated but it's really not.

1 If any of you have an iPhone or an iPad,
2 you'll be familiar with the concept of an add-on. Now
3 these days we're all familiar with downloading an App
4 onto our phone, right? And if you think about it, when
11:57:14 5 you get that phone or your iPad, it comes from Apple with
6 the standard set of software. You turn it on and it
7 already does a bunch of things, right, has e-mail and
8 whatever else on there. That's the standard core
9 software.

11:57:27 10 If you want to make your iPad do something
11 different, you can do that. You can customize it by
12 downloading and installing an add-on application. We just
13 call them apps these days. For Business One, it's the
14 exact same concept, only it's slightly more complicated.

11:57:42 15 And like with your iPhone or your iPad, the
16 add-on applications are not SAP's product. They're not
17 built by SAP. They're not developed by SAP. And SAP
18 doesn't support them. It's a very important concept in
19 this case because you heard some mention of a product
11:58:00 20 called In-Flight Enterprise, but it wasn't explained to
21 you what In-Flight Enterprise is. I'm going to go into
22 some detail about it.

23 This is the custom application, the custom
24 software that Hodell developed. It was an add-on to
11:58:14 25 Business One and it would sit on top of our base product.

1 As I told you before, as I told you before,
2 both before and after Hodell purchased our software at
3 the end of December, 2005, there were literally thousands
4 of successful customers using that software. Many of
5 those customers much, much larger than Hodell, with many
6 more users than Hodell ever had. I'm going to get into
7 some of that in more detail.

8 You're going to see that contrary to
9 Hodell's claim that Business One isn't suitable, I think
10 their counsel said, for more than 30 or 50 users, there
11 are customers out there running with thousands of
12 Business One users, thousands. One final point before I
13 get into some of the details. It's important to
14 understand that SAP, as Hodell's counsel told you, does
15 not use a -- does not have its own sales force, doesn't
16 go out and directly meet with customers and market
17 Business One that way. Like all the other products,
18 you'll learn, in that same space, all of SAP's
19 competitors -- and by the way, like a lot of products we
20 all buy every day, SAP distributes Business One through
21 dealers, also called resellers. It's a very important
22 concept.

23 The dealers, not SAP, are the ones that are
24 out there making the relationship with the customer.
25 They're meeting with the customer, they're getting to

1 know the customers' requirements. These are separate and
2 independent companies from SAP.

3 Hodell made a big deal about these dealers
4 or resellers being able to use SAP's logo and claims
11:59:59 5 somehow the use of our logo caused Hodell to believe that
6 companies like IBIS and LSi were one and the same as SAP.
7 I'm going to unpack that for you. I'm going to show you
8 they never really believed that. They had a long, long
9 relationship with IBIS/LSi way before we were involved.

12:00:17 10 Let me go to that right now. They didn't
11 tell you about any of this but it's really pretty
12 interesting. Dale Van Leeuwen, the principal of IBIS who
13 is right here, and Otto Reidl met back in the late 1980s,
14 the late 1980s. Throughout the 1990s, Mr. Van Leeuwen
12:00:50 15 and his company IBIS, they were working directly for and
16 with Hodell.

17 Folks, this is -- you can tell right here
18 on this timeline, way before SAP's involved at all. Just
19 look right there. It's not until 2003 that Business
12:01:06 20 One's even being sold in the United States. But, they've
21 known each other since the late eighties. They worked
22 together through the nineties.

23 Mr. Van Leeuwen, right here on the screen,
24 he testified about that relationship. He said like it
12:01:26 25 was marriage, like it was a partnership. Mr. Reidl said

1 the same thing. IBIS was a business partner.

2 I'm going to show you that this
3 relationship between IBIS and Hodell, it was a marriage
4 on the rocks. They were about to get divorced.

12:01:44 5 Let's take a look. Here's what the
6 evidence is going to show, I've got up here on the screen
7 right now a letter, this isn't just a simple e-mail; this
8 isn't some off-the-cuff reaction. This is a letter
9 written by Mr. Reidl in 2001. I want to go through some
12:02:01 10 of the details of what he said.

11 Writing to Dale Van Leeuwen at IBIS and
12 he's complaining to Mr. Van Leeuwen, the evidence will
13 show, about a prior software implementation, software
14 that had nothing to do with SAP and nothing to do with
12:02:20 15 Business One. Take a look at what he's saying. First
16 off, he's telling Van Leeuwen and IBIS, "We're incurring
17 at least a thousand dollars a day in higher costs to
18 maintain the status quo." He's telling them they're
19 losing money. The same kind of losses, by the way,
20 Hodell's counsel wants to tell you SAP later caused
21 Hodell.

22 Look at the next thing he says. "If the
23 product could not provide the capabilities required, all
24 of the parties selling Radio Beacon" -- I'm going to come
12:02:51 25 back to Radio Beacon. That's a piece of software -- "and

1 as a FACTS-integrated warehouse management system, had an
2 obligation to say so. They did not!"

3 He's telling Van Leeuwen you misrepresented
4 software. And look at what he finishes with. Reserving
12:03:11 5 his issues in the event he needs to seek legal advice.
6 You've lost me money, you've misrepresented software, and
7 I might need to go to a lawyer. Folks, this is in 2001.
8 And it doesn't end.

9 Let's fast forward to July of 2003. The
12:03:27 10 complaints continue. Only now Kevin Reidl, the president
11 of Hodell, gets involved. Let's take a look at what he
12 writes. This is July, 2011.

13 He's writing to Dale, and I've got to
14 stress, I'm going to keep doing it, I apologize, this is
12:03:43 15 before Business One's involved at all. There's zero,
16 zero communication to SAP at this point in time. No one
17 has told SAP anything about Hodell. And by the way the
18 evidence will show SAP was never told about any of the
19 documents I'm showing you. We only found out about these
12:04:01 20 after litigation was filed.

21 Let's go through what Kevin Reidl's writing
22 to Dale Van Leeuwen at IBIS in July of 2003. "I find it
23 disheartening to be in the position we're in with your
24 organization. How are we to rely on you in the future
12:04:20 25 when we need to keep a larger, more complex software

1 package running smoothly? How are we to rely on you?"

2 These are his words in May of 2003.

3 "I went to bat for you before my father.

4 He was ready to take legal action." They're ready to sue

12:04:41 5 Van Leeuwen and IBIS. And he finishes off telling Dale,

6 "Due diligence was never conducted at the start of the

7 project."

8 That's still not the end of it. Keep

9 going. The complaints continue. We see a series of

12:04:56 10 further e-mails in July of 2003 again before Business

11 One's involved at all. And look what these e-mails say.

12 Otto is writing these. He's back in the mess. Look at

13 this. "Dale, it has been 32 months and counting. The

14 same old story, no e-WMS," that refers to warehouse

12:05:20 15 management software and a program called Radio Beacon.

16 Same old story, no Radio Beacon, no FACTS upgrade, for

17 which we've now waited three years."

18 Look at the next sentence. "Perhaps

19 Profit 21 or Faspac should be considered." That's

12:05:37 20 different software. The evidence is going to show

21 Mr. Reidl is threatening Van Leeuwen that he's going to

22 switch away from him and go to a different software

23 platform.

24 "I really don't know what else to do!

12:05:51 25 We're certainly getting nowhere fast and we are losing

1 our," fill in the blanks, "in the process." But he's not
2 done. He sends more e-mails, look at the bottom. He
3 tells Van Leeuwen and IBIS our labor costs are up a cent
4 and a half. They're losing a cent and a half, Otto Reidl
12:06:11 5 is claiming, on every sales dollar, imagine that, due to
6 the inefficient paper method. What is he saying? The
7 evidence is going to show they were complaining to
8 Van Leeuwen about the same things they complain now about
9 SAP, that they were losing productivity and they were
12:06:25 10 losing money.

11 Tells him we're in a three-year rut.

12 Let's keep going. There's more e-mails.
13 He doesn't stop. Look what he writes back now. This is
14 from Otto Reidl to Dale Van Leeuwen. "I'm personally
12:06:52 15 convinced that eWMS software" -- that is not SAP
16 software, this is all before we're involved, "I'm
17 personally convinced that eWMS was promoted well beyond
18 its capabilities." He's dealing with him in writing;
19 again, he's misrepresented software.

12:07:09 20 "I cannot begin to measure the cost of this
21 lack of progress and I'm worried we don't have a
22 realistic fall-back-upon option." He thought he was tied
23 to Van Leeuwen and to the software that he put in place.

24 Then you have some of the background that
12:07:24 25 you didn't hear before. Let's see how SAP, unknowingly,

1 gets swept up into this mess between Hodell and IBIS that
2 had been going on for years.

3 Hodell told you that it was in 2003 that
4 they felt, I think their words were, that they needed to
12:07:41 5 move off of FACTS. They didn't tell you why they needed
6 to move off of FACTS. You just saw why. They felt they
7 had been misrepresented. And the evidence is Mr. Reidl
8 goes out on his own and starts investigating other
9 potential software and he learns about Business One.

12:07:58 10 You're also going to learn that in 2003,
11 Mr. Reidl starts having conversations with American
12 Express. American Express is not a party to the case.
13 Way back at that time, they were a reseller of various
14 software products, not just SAP products. They have
12:08:16 15 their own edition of SAP Business One. They call it the
16 American Express edition. The evidence will be that
17 between October of 2003 and November of 2004, Mr. Reidl,
18 on behalf of Hodell, and Penelope Vitantonio from
19 American Express had a series of conversations. I'm
12:08:36 20 going to go into some of those conversations in some more
21 detail later, but I want to flip ahead to the end of
22 their dealings.

23 Before I do that, though, I'm sorry, stay
24 right there. I want to stress to you something that's
12:08:48 25 really important. Mr. Van Leeuwen and IBIS who Hodell

1 wants to tell you was working for SAP as our agents, his
2 testimony in this case is he knew nothing at all about
3 SAP, zero. Guess how he learned about it? A phone call
4 from Otto Reidl. Otto Reidl found out about the product
12:09:13 5 and called Van Leeuwen. And then what did he do?
6 According to Van Leeuwen, Otto directed him as his
7 partner to drill down on the application. And that's
8 what the evidence will show.

9 IBIS was working as a partner with Hodell.
12:09:26 10 It was directed by Hodell to go out and investigate
11 Business One. And that's what Mr. Van Leeuwen did, but
12 he didn't even know about the product until Hodell told
13 him.

14 Let me go to the end of Mr. Reidl's
12:09:40 15 dealings with American Express. I want to show you what
16 was being discussed.

17 It's undisputed that you've heard a lot of
18 talk about users but I don't think anybody has explained
19 what a software user is. It's pretty simple. A user is
12:09:56 20 just a person who actually is using the computer.

21 Each person who's going to use a software
22 package has to have a license. Okay? So if you have ten
23 people that are going to use the software in your
24 company, you have to acquire ten licenses. That's the
12:10:12 25 way it works with Business One. That's the way it works

1 with any of the ERP products, and by the way, with your
2 home software when you get the software, you agree to the
3 terms of a license agreement.

4 Here's what's being discussed. The
12:10:23 5 financial aspects of that become pretty interesting.
6 These are notes on the left-hand side that Mr. Reidl took
7 from a discussion he had with Penelope Vitantonio on
8 February 2nd of 2004, and you see her notes on the
9 right-hand side of your screen.

12:10:39 10 And here's what was being discussed in
11 terms of the price per user. It's undisputed, the price
12 for each Business One user was always at least \$3,500.
13 Now, if you do the simple math and multiply \$3,500 times
14 300 users, they say they wanted 300 users, you come out
12:11:05 15 to over a million dollars.

16 I'm going to show you Hodelle never even had
17 a budget anywhere close to that.

18 Take a look at what was discussed next
19 between Mr. Reidl and Ms. Vitantonio. It's documented
12:11:18 20 four days later, Ms. Vitantonio proposed a Business One
21 solution for a total price of \$582,000. It's documented
22 in both of their notes.

23 And it didn't just include Business One
24 software. It included a number of other add-on products.
12:11:37 25 It included Radio Beacon, which I'm going to talk more

1 about. It included Amex's own add-on to Business One.
2 That price included implementation and consulting
3 services.

4 And I told you Hodell didn't have a budget
12:11:53 5 anywhere close to 300 licensed system. They didn't even
6 have a budget close to what Ms. Vitantonio propose. How
7 do we know? Mr. Reidl's notes. Let's take a look.
8 Here's what he tells Penelope Vitantonio. When he gets
9 the \$582,000 quote, he tells her this is basically the
12:12:15 10 end of our interest. She asked where we have to be, and;
11 I responded at most, half. I told her, "It was nice
12 knowing her, but we can't afford this package and we will
13 have to shop alternative software."

14 So what did they do? Hodell is dealing
12:12:37 15 with American Express. The evidence is American Express
16 had already developed its own add-on, and there they had
17 a proposal for \$582,000. They reject that proposal and
18 they go back to Van Leeuwen and IBIS, their old business
19 partner, and they come up with a plan.

12:12:54 20 Remember, months before that, they had been
21 threatening to sue him and had been doing that for years.

22 And their plan, to build a new custom
23 application and they're going to make it a three-part
24 application. They're going to take a program called
12:13:11 25 Radio Beacon. Radio Beacon is not an SAP software

1 program. It's an add-on product that sits on top. They
2 were going to take Radio Beacon, and they were going to
3 add to that their own software package that they were
4 calling In-Flight Enterprise. It did not exist. Very
12:13:30 5 important to understand, this software did not exist.

6 This was going to be a brand new custom
7 development. They were going to write every line of
8 software code from scratch. And then what they were
9 going to do is put that on top of our software Business
12:13:44 10 One, and see if they can make it work.

11 Ultimately, IBIS/LSi and Hodell sign a
12 development agreement. Refer to the board there. It
13 happens in December of 2004. So let me focus on a couple
14 things really quick.

12:14:04 15 The parties to the agreement, you saw that
16 very clearly. There it is. It's not SAP. Can you bring
17 that up? I'm sorry, get back.

18 Might be a little bit difficult to read on
19 your screen but in the upper left-hand corner, it says
12:14:27 20 who are the parties, and it says -- pardon me, Alex, go
21 back to the agreement. Thank you.

22 The three, the development agreement
23 between Hodell-Natco Industries, The IBIS Group, a
24 wholly-owned subsidiary of LSi, and LSi-Lowery Systems.
12:14:46 25 And look at the bottom of the second page where there's

1 signatures. It's signed by Hodell, and it's signed by
2 IBIS and LSi. SAP is not a party to this contract. The
3 Court's already held that.

4 Now, Hodell wants you to believe that SAP
12:14:59 5 knew everything that was going on before this deal was
6 going on between Hodell and IBIS/LSi. I'm going to show
7 you that's simply not the case.

8 Before I do that, we're going to walk you
9 through the financial aspects of what Hodell and IBIS/LSi
12:15:13 10 had agreed upon. Hodell understood, ladies and
11 gentlemen, and the evidence is going to show that they
12 were taking a massive gamble. This was a very risky,
13 uncertain custom development of software. And they
14 already were expressing concerns months before they
12:15:35 15 signed their agreement with IBIS/LSi.

16 Here's another handwritten note from
17 Mr. Reidl. Look what he writes. "Hodell concerns." The
18 first, first item. "They missed their first estimate of
19 implementation start." They're already late.

12:15:51 20 Item Number 2, "It's a custom development
21 of major components." He knows this is huge. This is
22 going to take a long time. It's risky and it's
23 uncertain.

24 Look at Item Number 4. He's questioning is
12:16:08 25 there an SAP commitment? The evidence is going to show

1 no, we weren't involved at all. That's why he's writing
2 that. He knows we're not involved.

3 What did Hodell want in exchange for taking
4 on all this risk? It's pretty easy. It's here in
12:16:29 5 another note from Hodell. They recognize they were going
6 to be, in their words, a development partner with
7 IBIS/LSi. And what did they want in exchange for that
8 risk? They wanted to see rewards on the success of the
9 product. And by that, they wanted to share the
12:16:47 10 commissions on future sales.

11 Folks, they wanted to share in the profit
12 of their new custom software application. They were
13 taking risks. They knew they were taking risks. They
14 wanted to see rewards. And this had nothing to do with
12:17:01 15 SAP.

16 Let me look at -- let me show you some more
17 of the financial aspects. You're going to come to
18 understand what was really going on. Hodell showed you
19 some of this in their opening presentation. These are
12:17:17 20 letters between IBIS/LSi and Hodell in October of 2004, a
21 couple months before they signed their contract.

22 Let's take a look at what they were saying.
23 They were projecting this as a project that would take at
24 least 5,000 hours, 5,000 hours. That's not going to get
12:17:36 25 done in a week or two. That's a complicated, long

1 project that's full of risks and full of uncertainties.
2 That's what the evidence will show.

3 Hodell's going to fund this project for a
4 total price of \$300,000. They're going to make an
12:17:52 5 upfront payment and a series of installments of \$60,000
6 each and their upfront payment is going to be \$180,000
7 spread over the course of a year, and that money was
8 going to go toward the development of their own custom
9 software.

12:18:08 10 Part of this deal, Hodell was getting a big
11 portion for free at no charge. Look at this. It was
12 estimated that In-Flight Enterprise, their custom
13 application, was going to take over 3800 hours alone to
14 develop.

12:18:30 15 Now, you see below, IBIS/LSi was normally
16 billing itself at \$150 an hour for its work, but what do
17 they say about In-Flight Enterprise? Hodell is getting
18 it at no charge, free. The math is simple. 3800 hours
19 at 150 bucks an hour, that's over \$570,000 of free
12:18:54 20 software development.

21 Why is Hodell going to get \$570,000 of free
22 software development from IBIS/LSi? Seems odd, doesn't
23 it?

24 Here's the answer. This is Mr. Reidl's own
12:19:10 25 handwritten note. It's from November, 2004, just a month

1 before they sign their contract with IBIS/LSi. And look
2 what he writes. "The In-Flight pass," what I just showed
3 you, the free In-Flight software, "Was IBIS's restitution
4 for our implementation penalty of Radio Beacon."

12:19:32 5 Ladies and gentlemen, the evidence is going
6 to show this is how they settled their prior dispute with
7 IBIS/LSi. They were going to get free software to the
8 tune of over \$570,000, but it turns out that's not all
9 they're going to get because when they actually signed
10 their contract, the deal got even sweeter for Hodell.

11 Alex, can we get into the financial part of
12 the development agreement, please? Here we go. This is
13 right from their own contract, the contract between
14 Hodell and IBIS/LSi. Here's what it says. "In exchange
15 for the downpayment, that's the \$180,000, The IBIS Group
16 is going to give all the free licenses Hodell might ever
17 need for In-Flight."

18 And look at the next part. "Upon
19 successful completion of In-Flight, and in consideration
12:20:19 20 for assisting in the initial funding of In-Flight
21 Enterprise development, Hodell-Natco is going to receive
22 \$100 per user license fee for the first 1,000 users of
23 In-Flight."

24 The evidence is clear what that meant was
12:20:37 25 Hodell and IBIS/LSi were going to resell their custom

1 software product for a profit to both of them.

2 We're going to prove to you, ladies and
3 gentlemen, that Hodell and IBIS/LSi are not even close to
4 being SAP's agents. We're not responsible for the things
12:20:58 5 that IBIS/LSi were doing with Hodell. Instead the
6 evidence is going to show that Hodell and IBIS/LSi were
7 together for years, and they came up with a plan to
8 commingle their resources, a common purpose. Hodell
9 provided the funding. IBIS/LSi provided the skills. And
12:21:14 10 their plan was to benefit both of them for the resale of
11 a custom software application.

12 That's what this case is really about.

13 Let me just touch on this point that Hodell
14 tried to tell you in its opening. They claim that SAP
12:21:31 15 was really fully informed and knew everything that was
16 going on here. What you're going to hear from SAP's
17 witnesses, the people they claim knew what was happening,
18 they mentioned a guy named Dan Kraus and Geoff Ashley.
19 They're both going to testify. They say they knew very,
12:21:48 20 very little. And we've got the evidence to show it.

21 Here's an e-mail that came in to Dan Kraus
22 in November of 2004. Let's look at that timeline. This
23 is one month before Hodell and IBIS/LSi sign their
24 development agreement and we know they've been at that
12:22:06 25 for a long time. They've already hashed out the

1 financial aspects of their deal.

2 Look at what Dan Lowery from IBIS/LSi tells
3 Dan Kraus at SAP. He says this: "LSi/IBIS has an
4 opportunity with Hodell-Natco, an existing IBIS fasteners
12:22:25 5 customer." Dan Kraus is going to testify this is his
6 first introduction to Hodell. And you'll have this
7 e-mail later, you'll get to read it. He was told next to
8 nothing. Instead, he was asked to quote a price for 80
9 user licenses.

12:22:39 10 Here's what's attached to the e-mail.
11 Interesting. This is all that's sent to him. Says hey,
12 there's going to be 80 licenses. Here's what the price
13 per license is going to be. And look at this down -- you
14 see the left-hand column, there's numbers that run
12:22:54 15 vertically. Look at Item 16. LSi/IBIS would acquire the
16 licenses in the fourth quarter of 2005."

17 That was the plan all along. I told you
18 earlier that for some reason the parties can't come to an
19 agreement on when Hodell actually got licenses and bought
12:23:12 20 our software. Hodell says to you it was back here in
21 December of 2004. We say it was here. This supports
22 what we're telling you, but I'm going to show you more.

23 Hodell continues to say we were fully
24 informed of what was happening. Our witnesses are going
12:23:31 25 to tell you that between that e-mail I just showed you in

1 November of 2004 and almost a full year later, we were
2 told almost nothing. We're not involved at all. They're
3 off on their own doing their own custom software
4 development project.

12:23:46 5 The evidence is going to show not only was
6 SAP not involved, SAP was not directing what was going
7 on, we were not supervising it, we weren't getting status
8 reports, we had never seen their product, we never saw
9 their source code for their new In-Flight product, none
12:24:01 10 of that was happening.

11 Take a look at this e-mail. It's really
12 interesting. This comes in to SAP on September 26th,
13 2005. It's from Dan Lowery at IBIS/LSi, and he writes to
14 a gentleman named Ralf Mehnert-Meland who works for SAP.
12:24:18 15 Look at his question. "Ralf, are you aware of our
16 In-Flight development effort?"

17 Ralf's response, almost comical, "Dan, in
18 very general terms, I understand it's for the fasteners
19 industry. Is that correct?" He knows nothing. And
12:24:36 20 look at what Lowery then writes internally at IBIS/LSi to
21 Dale Van Leeuwen. It's at the bottom there. He writes,
22 "See, no one knows about it. No one knows about it."

23 That was the truth. We knew nothing. We
24 weren't involved. We weren't directing, controlling or
12:24:54 25 supervising anything that was happening.

1 There's more. They tell you Dan Kraus,
2 specifically they said they identified Dan Kraus from SAP
3 as I think they told you in their opening, they're
4 claiming he was personally involved in the sale process
12:25:10 5 and he knew everything that was happening. Look at this
6 e-mail internally at SAP from Dan Kraus. This is an
7 October, 2005, a full year after the development
8 agreement between IBIS/LSi and Hodell. And look what he
9 writes. "I have gotten no update on this in a year."

12:25:31 10 Folks, that's an internal e-mail in October
11 of 2005. Mr. Kraus will be here to testify. He hasn't
12 worked for SAP, by the way, in years. He's going to
13 travel here from North Carolina to tell you his version
14 of what went on. He knew nothing, nor did anybody else
12:25:49 15 at SAP.

16 Let's keep going. A couple months later,
17 and you can see it on the timeline here, an agreement,
18 the one and only agreement between Hodell and SAP is
19 executed. And it's a software license agreement. Now,
12:26:07 20 Hodell again tells you it bought our software back in
21 December of 2004, but let me show you this.

22 Alex, could we have the order form? On
23 December 22nd -- apologize, the copy that we have is
24 difficult to read, but we all agree on what it says. On
12:26:26 25 December 22nd of 2005, an order comes in to SAP and it's

1 for 80 licenses. No order was ever placed with us back
2 in December of 2004. This is the first order. It was 80
3 licenses. This is when they bought our software.

4 And the next day they signed a license
12:26:44 5 agreement with us. And here it is.

6 Now, Hodell didn't show you this license
7 agreement. They mentioned it a couple times in their
8 opening. You'll hear a whole lot about it when the
9 witnesses testify. We're going to go through each of
12:27:01 10 these provisions in painstaking detail. You're going to
11 get to know this contract. It's a four-page document.

12 Hodell would have you believe you could
13 just crumple this thing up and throw it in the trash. It
14 would have you believe this is something sketched out on
12:27:16 15 the back of a napkin in a bar and they don't care about
16 it, you shouldn't consider it.

17 But you just saw the evidence. Hodell had
18 been working for years already with the goal of creating
19 its own custom application to place on top of Business
12:27:33 20 One. Part of that plan, as you know from the December,
21 2004 development agreement, was Hodell was eventually
22 going to buy our software.

23 And that was the culmination of that plan
24 when they were going to come to us and order the software
12:27:48 25 and license it from us. This was a serious transaction.

1 We asked Otto Reidl and Kevin Reidl at
2 their depositions, did you read this document? They both
3 told us the exact same thing, they read it stem-to-stern,
4 every word of it. They had no confusion, they told us.

12:28:08 5 Otto Reidl will testify as he did before
6 this document was written in plain English, and I could
7 understand it, and I want to focus on something in this
8 contract that you'll all understand.

9 First off, it's a contract between SAP and
12:28:21 10 Hodell. But let's go to an important provision because
11 this is what they want to prove to you in this case.
12 They want to prove to you that SAP is responsible for
13 anything and everything that IBIS/LSi might have been
14 doing. That SAP and IBIS/LSi were in an agency
12:28:37 15 relationship, they tell you.

16 Look at this language, folks. Take a
17 moment. This is in black and white in the contract.
18 Hodell signed with IBIS/LSi in December of 2005 when they
19 purchased our software. "Licensee," that's Hodell,
12:28:54 20 "acknowledges and agrees that the SAP reseller,"
21 undisputed that's IBIS/LSi, "through which Hodell has
22 arranged for the procurement of this agreement or from
23 which Hodell receives any services related to the
24 software" -- guess what? There it is. Read it -- "is
12:29:12 25 not the agent of SAP." It is in black and white.

1 It goes on, though. It doesn't even end
2 there. The SAP reseller is what? It's what I've been
3 saying, "An independent company, person or entity with no
4 authority to bind or make representations or warranties
5 on behalf of SAP."

6 Folks, that's clear language. It's in the
7 contract they signed with us. And what else did they
8 agree to? Hodell says to SAP, "Hey, this is our entire
9 agreement. There it is. This agreement, and each
10 schedule and appendix hereto, constitute the complete and
11 exclusive statement of the agreement between SAP and
12 Hodell," and guess what, "All previous representations,
13 discussions and writings are merged in and superseded by
14 this agreement." This is everything.

15 And this everything includes an
16 acknowledgment and agreement by Hodell that IBIS/LSi is
17 not SAP's agent. And they knew that.

18 That's some of the important background
19 that you didn't hear during Hodell's opening.

20 Let me transition a little bit, I want to
21 switch gears. I want to talk about Hodell's actual
22 claims. They tell you SAP committed fraud. SAP's guilty
23 of what they say is negligent misrepresentation. These
24 claims are all basically the same. They want to say and
25 want to prove that SAP lied. Okay?

1 Judge Nugent will later instruct you on the
2 elements of these claims, but at their core, Hodell has
3 the burden of proving and establishing to you that SAP
4 actually said something to Hodell that was false,
12:30:53 5 actually said something that was false at the time it was
6 said, and that SAP knew it was false, and that SAP did it
7 with the intention and the motivation to actually mislead
8 Hodell.

9 And what did they tell you? They told you
12:31:10 10 they were promised that they could have a 300 user
11 system. And they told you those promises came in two
12 different ways. First, they said they got verbal
13 promises, right? You heard that. And then they said our
14 marketing ads misled them.

12:31:26 15 Let's walk through all of it. I'm going to
16 show you that SAP had zero contact with Hodell before it
17 bought our software. Otto and Kevin Reidl have
18 previously testified in this case and I'm sure they will
19 again that the first time they had contact with SAP was
12:31:43 20 in 2007. Look at that timeline. They bought our
21 software in December, 2005. They didn't speak with us
22 for more than a year later. Zero direct contact.

23 So they don't even claim that anybody from
24 SAP itself looked them in the eye and lied. They want
12:32:02 25 you to believe they were lied to by IBIS/LSi, and that's

1 why they want you to believe IBIS/LSi were our agents.

2 Let's take a look at what they say.

3 Mr. Reidl will tell you, as he's done before in the case,

4 he believes the verbal promises that he received were

12:32:21 5 given to him on one specific date. This is an excerpt

6 from his prior deposition. He's told us over and over

7 again it was during a conversation on December 3rd of

8 2003, that he was told Hodell could have 300 users.

9 Sometimes he says he was told 300 users, sometimes he was

12:32:47 10 told 500 users. He's not really sure. It's really

11 interesting. We have handwritten notes from that

12 meeting. Take a look at them. Hodell didn't show these

13 to you during their opening.

14 These are Mr. Reidl's own handwritten notes

12:33:04 15 from December 3rd of 2003. That's it. Two pages.

16 It says nothing about users. It says

17 nothing about 300 users, nothing about 500 users, nothing

18 at all. Well, as I told you before, there were a series

19 of calls and meetings between American Express and

12:33:29 20 Mr. Reidl between October of '03 and November -- pardon

21 me -- and February of 2004.

22 Let's take a look at Mr. Reidl's next set

23 of notes from the next meeting he had. It was on

24 December 19th of 2003. You're going to get these.

12:33:48 25 You'll have them in your hands to look at later on. Zero

1 mention of the word users. No mention that he was
2 promised 300 or 500 users.

3 We don't have to just go off of his notes.
4 Ms. Vitantonio from American Express with whom Mr. Reidl
12:34:05 5 was having these meetings, kind of odd, she kept her own
6 notes, too. You rarely see two people keeping sets of
7 notes and having them still, but we have them in this
8 case.

9 Alex, let's go back to Ms. Vitantonio's
12:34:19 10 notes from December 3rd of 2003. A bit harder to read.
11 You'll have them in your hand later on. She was
12 obviously a pretty dense notetaker. You'll get to read
13 through that. There's no mention at all of users, no
14 promise in there of 300 or 500 users. It just didn't
12:34:36 15 happen.

16 And take a look at Ms. Vitantonio's notes
17 from the next meeting she had with Mr. Reidl on December
18 19th. There's also no mention of users. But other notes
19 by Ms. Vitantonio did mention users. Let's take a look
12:34:52 20 at what was actually being discussed.

21 Here are her notes from meetings she had
22 with Mr. Reidl, first, in November of 2003 and, later on,
23 in February of 2004. Each time they're discussing 100
24 users. 100. Not 300 and not 500. Ms. Vitantonio will
12:35:16 25 be here live to testify. She's only going to explain

1 what she remembers of her discussion with Mr. Reidl.
2 She's going to go through her notes with you. You'll
3 understand her testimony on that.

4 Let me make this final point with respect
12:35:32 5 to Hodell's claim that SAP somehow promised 300 or 500
6 users. You will not see a shred of paper, a note, an
7 e-mail, a memo, anything like that, that shows SAP
8 actually promised that or that Hodell believed they were
9 promised that.

12:35:51 10 It just doesn't exist. So their next
11 theory is to point to our marketing advertisements,
12 right? You heard them talk a little bit about that.

13 Let's just take a quick look. I'm not
14 going to belabor the point. You'll get to see the ads.
12:36:07 15 They will be talked about throughout the case. A few
16 high-level points that are unrefutable, these are high
17 level ads, they make no warranties or promises to
18 anything. The same kinds of things where we watch a
19 commercial on TV or read about a product in a magazine,
12:36:23 20 it's not making a specific promise to us as a consumer
21 and our ads weren't making a specific particular promise
22 to Hodell. You will see Hodell's names were not in those
23 ads and more importantly, do not talk at all about
24 Hodell's complicated software that hadn't yet been built.

12:36:42 25 So take a look at a couple ads Hodell likes

1 to focus on. They show you some ads and things from 2003
2 and 2004. I want to make one point here. Every one of
3 those ads, they use the term employees. None of those
4 say you could have a certain number of users. Hodell's
12:37:01 5 going to try to convince you throughout this case that in
6 the context of a business software system, users and
7 employees are one and the same.

8 It's simply not true. You're going to hear
9 a lot of testimony about this, and Hodell itself will
12:37:15 10 admit that in a business software system, a company's
11 number of employees is always going to exceed the number
12 of users. And the reason for that is simple: This kind
13 of system runs financial aspects of the company and
14 there's plenty of employees that you'll have that simply
12:37:33 15 don't need to be on that system and that you're not going
16 to spend \$3,500 or more to have a license for. They just
17 don't need it.

18 Employees and users are two completely
19 different things. And our early ads never mentioned
12:37:48 20 users.

21 And what's really important is that Hodell
22 didn't buy our software until December of 2005. Now,
23 they try to make it sound like SAP was lowering numbers
24 in its target market and they had no idea about this
12:38:01 25 before they bought the software. That's why they want to

1 tell you they bought the software in December of 2004,
2 but you just saw the proof. They bought our software in
3 December of 2005.

4 So let's look at what SAP was saying about
12:38:13 5 Business One prior to their purchase of our software.
6 Here's a couple of examples, I think they showed you this
7 one. This is an SAP official statement of direction for
8 Business One and it came out in April of 2005. This is
9 some nine months before Hodell buys our software and look
12:38:32 10 at what it says: "Business One will focus on the needs
11 of businesses with ten to 100 employees." Ten to 100.
12 Those are the things we were talking about.

13 Take a look at another example. This is
14 from 2005. This document, by the way, was in the
12:38:50 15 possession of IBIS/LSi. We know that because they
16 produced it to us in this case. They had it in their
17 files and they produced it to us in this case. Look what
18 it says. As of 2005, here's where we're positioning
19 Business One. It's targeting prospects with 10 to 200
12:39:13 20 employees and 3 to 100 users. Those were the things we
21 were saying about our product.

22 And by the way, the evidence shows none of
23 that was being withheld. That was being shared with the
24 public in general. Take a look at this next exhibit that
12:39:28 25 you'll see.

1 This is an article that Hodell found on the
2 Internet. They produced it in this case. They did an
3 Internet search, and they found this. Take a look at it.
4 It's from November of 2005. It's a month before they buy
12:39:44 5 our software. "Latest news on ERP software," talking
6 about SAP Business One 2005. What does it say? "Aimed
7 at companies looking for 10 to 100 users." Ten to 100.
8 That information is out there for the public to see.
9 Hodell found this on the Internet. That's what we were
12:40:06 10 saying about our product.

11 Let's skip ahead. One of the things you
12 heard from Hodell's counsel was, hey, SAP just didn't
13 test Business One. Right? And then they showed you some
14 graphic that, by the way, they put together from some
12:40:24 15 chart that had numbers on it and they said, oh, SAP
16 didn't test Business One in an environment like Hodell
17 had. Well, we dispute that, too.

18 I'm going to show you that not only did SAP
19 test its software but other companies like IBM were
12:40:42 20 testing our software. It's very important to understand
21 that software testing happens in a couple ways. You'll
22 hear testimony about this from a couple experts. First
23 of all there's functionality testing. If the software is
24 supposed to add two plus two to get four, you make sure
12:40:58 25 it does that. That's not what we're talking about.

1 We're talking about performance testing. It can get
2 complicated, but everybody I'm sure uses a computer in
3 one way, shape or form. And your computer at home, it
4 runs software, right? If you want to test how your
12:41:13 5 software works, you need a computer. You need hardware.
6 If you go to Staples or Office Max and you purchase a
7 Microsoft product on a CD, some software, and you take it
8 home and you don't have a computer, that software is a
9 paper weight. Its performance is absolutely zero.

12:41:30 10 The evidence you're going to hear is in the
11 context of testing software performance, it's done in
12 what's called a hardware size and answer size. Hardware
13 sizing. The vendors come up with particular hardware
14 configurations. They add together what are called
12:41:45 15 servers. Right? We don't have these at home if we're
16 running a computer. But if you have a business, you have
17 a bank of computers called servers and you run a lot of
18 your software off of that and you connect your computers
19 to the server through networking and cabling and then the
12:42:00 20 user has his or her own machine. Right? So there's
21 multiple aspects of hardware in a business software
22 environment and that's exactly what was tested.

23 Let's take a look at some evidence you will
24 see on this. Here's testing done by biz2bizmarketing,
12:42:16 25 biz2bizmarketing, not SAP. Done back in April of 2004

1 before they even signed their development agreement. And
2 look at what IBM is doing. It's chosen different
3 configurations on which to test with different users.
4 Right there on the screen, they tested with 20, 75 and
12:42:33 5 120 users and the results of their testing with 120
6 users? IBM didn't say hey, it won't work, don't sell it
7 to a company wanting 120 users. No. IBM recommends if
8 you want to run with 120 users, here's the kind of
9 computer hardware you should go out and buy. You can do
12:42:54 10 it. You just need the computer hardware.

11 Think about it. It's like saying hey, I
12 want to pull a trailer of a certain size, right? Can I
13 do it with a car? No. I might need to go get a pickup
14 truck. That's what they're saying.

12:43:08 15 You want to increase the number of people
16 on your system? Here's the kind of hardware you need to
17 run it. And you can do it, no problem.

18 And it doesn't end there. SAP did its own
19 hardware sizing test and its own performance testing.

12:43:24 20 This one's from July of 2004, they're testing in a
21 configuration which they call a large configuration of
22 150 users. Look what they write. "Most actions took
23 less than a second." For a computer user, that's, you
24 know, you press a button, things are moving right along.
12:43:41 25 That's what you want to see. That's what they saw.

1 But we did even more testing. Just take a
2 look. In August of 2004 we're even testing with 300 and
3 500 user configurations. And look at the results we're
4 seeing, folks. So when Hodell stands up here and tells
12:43:59 5 you SAP didn't test its product, perhaps it's they don't
6 understand how software is actually tested. It's tested
7 in the context of hardware sizing, and there you see it.

8 I mentioned to you early on that SAP has
9 many large customers. Hodell wants you to believe not
12:44:17 10 only did we not test Business One but nobody else could
11 run Business One for more than a handful of users.

12 Simply not true. This is representative,
13 by the way, of large accounts SAP had on Business One way
14 back in 2005 before Hodell bought our software. You're
12:44:39 15 going to see more evidence and hear more evidence about
16 this. SAP's witnesses, they're going to show you
17 spreadsheets, reports of Business One customers. These
18 go on like this, dense reports, page after page after
19 page listing customers running Business One with hundreds
12:45:01 20 and even thousands of users. Yet Hodell tells you the
21 software simply couldn't work for more than a handful.

22 Our witnesses will tell you that's not
23 true.

24 That's basically Hodell's case, folks.
12:45:19 25 That's basically it, right? They tell you SAP lied, SAP

1 promised 300 or 500 users, this happened during
2 conversations back in 2003 or it happened through
3 marketing advertisements. You just saw all of it. Even
4 Mr. Reidl's notes from those conversations say nothing at
12:45:40 5 all about what they want you now to believe.

6 And those marketing ads, they also don't
7 say what they want you to believe and more importantly,
8 they have nothing at all to do with the complicated
9 customized program Hodell was building with its business
12:45:55 10 partner IBIS/LSi.

11 Let's talk about that. I know we're coming
12 up to lunch. I've got maybe about 20 more minutes to go
13 if you can all hang in there with me. All right? Try to
14 move fast through some of this.

12:46:09 15 Now that you know Business One works for
16 big, big companies like Whirlpool or Loreal and the other
17 companies you saw up on that screen, let me tell you
18 about what happened here. What happened here was
19 Hodell's In-Flight application, their custom software, it
12:46:30 20 turned out to be massive and very complicated. One of
21 the witnesses that will testify live is a person named
22 Joe Guagenti, Joe Guagenti worked for IBIS/LSi. He was
23 the lead programmer, the guy sitting at the computer
24 writing the code for In-Flight. He's going to tell you
12:46:46 25 the thing was a mess. It was a mess. He's also going to

1 tell you SAP had zero involvement in his work. We never
2 saw his code. We didn't tell him how to write his code.
3 We didn't supervise him at all. And he wasn't employed
4 by us.

12:46:59 5 The other reason we're here is Hodell
6 itself. Hodell turns out to be a pretty unique customer,
7 had very high transaction volumes and on top of that, it
8 had outdated and underpowered computer hardware, outdated
9 and underpowered computer hardware trying to run a
12:47:23 10 complicated customized business solution.

11 Let's go through some of that.

12 The evidence is going to show that
13 unbeknownst to SAP, this project, this custom development
14 project between IBIS and Hodell, it was in freefall.

12:47:43 15 IBIS/LSi was in internal turmoil. Here's what you're
16 going to see.

17 This is from -- this is an e-mail you will
18 see in this case. This is from May of 2005. This is
19 seven months, folks, seven months before Hodell buys our
12:48:01 20 software.

21 Dan Lowery, the principal of IBIS/LSi, is
22 writing internally at his company. And he's saying,
23 "Hey, I'm thinking on how to approach Otto for the second
24 payment." Remember I told you this was going to be
12:48:17 25 funded through installment payments of \$60,000 each.

1 This is in connection with that second \$60,000 payment.

2 He asks for thoughts from Dale Van Leeuwen

3 and Jon Woodrum. Take a look at the response from Jon

4 Woodrum. You'll find it remarkable. This is Jon

12:48:38 5 Woodrum, May of '05. He writes here, "This is way more

6 than we can realistically accomplish for this project in

7 this year." At the bottom, we're looking at 10,000 hours

8 and five years to get this thing done, not 2800 hours

9 this year.

12:48:52 10 What's IBIS/LSi saying internally? "Oh,

11 we've bitten off way more than we can chew. We can't get

12 this thing done." Evidence is no one tells SAP any of

13 this. By the way, IBIS/LSi didn't even tell Hodell.

14 Take a look at this. A couple days later

12:49:11 15 Dan Lowery on IBIS/LSi's behalf writes to Mr. Reidl and

16 look what he says? He's asking him for that \$60,000

17 payment and he says this: "As a result of our last

18 meeting and progress review, I hope you feel as I do,

19 that we demonstrated through execution of our game plan a

12:49:30 20 dead indication to the project that shows us to be on

21 target to our projections." Really? That's not what Jon

22 Woodrum just said.

23 And he goes on to talk about what they're

24 doing. Look at the bottom, "We look forward to our

12:49:46 25 continued partnership, partnership between IBIS/LSi and

1 Hodell, and meeting our next set of milestones together."
2 He doesn't tell even Hodell that they're way off track
3 but they are.

4 Let's keep taking a look. This is another
12:50:04 5 e-mail from Jon Woodrum, this one comes in February of
6 2006. This is just after Hodell has actually purchased
7 software from SAP. The evidence is going to show that
8 Dale Van Leeuwen, the guy that Mr. Reidl knew from the
9 late eighties, and who calls himself -- called himself
12:50:21 10 the captain of the ship of this software development
11 project, he had already decided he was quitting. But he
12 didn't tell Hodell, and he didn't tell SAP.

13 Evidence will show that this discussion in
14 this e-mail is in connection with what IBIS/LSi is going
12:50:36 15 to do to try to replace Mr. Van Leeuwen. Look at what
16 Jon Woodrum writes. "I don't want to take ownership of
17 this project in the customer's eyes because, for one, I
18 couldn't look them in the eye or even talk to them on the
19 phone about this project."

12:50:51 20 He goes on, "We need to define the scope of
21 the project." The thing is in freefall. Nobody is
22 telling us.

23 It gets worse. As I told you, Dale
24 Van Leeuwen had decided to quit and he did. He was out
12:51:11 25 of there. IBIS/LSi hires a replacement, a gentleman

1 named John Bilas. This is really interesting. Mr. Bilas
2 comes in in March of 2006. The first thing he does is he
3 writes a detailed three-page progress report. It's
4 internal at IBIS/LSi. You will have this later on, can
12:51:36 5 read the whole thing. Let's just highlight a couple
6 things real quick. Look what he's saying about their
7 project.

8 "A few members of the team were informed on
9 a regular basis as to the project status." Yet by the
12:51:47 10 way, Hodell wants you to believe even though internally
11 at IBIS/LSi they didn't even know what was going on, that
12 somehow SAP knew everything.

13 Bilas goes on. There does not appear to be
14 a defined scope of this project. This does not appear to
12:52:03 15 be a very well organized or documented project. On and
16 on and on. Folks, what happens to John Bilas? Fired.
17 Weeks later he's fired. He comes in as Van Leeuwen's
18 replacement, he writes a scathing internal report as to
19 what's going on at IBIS/LSi and they can him. That's it.

12:52:30 20 And SAP is told none of this, none of it.

21 Alex, jump ahead to Hodell's.

22 I want to cover this topic. Hodell wants
23 you to believe and they told you many times that all of a
24 sudden after they went live on the software, which no
12:53:08 25 dispute happened in March of 2007, they want you to

1 believe that, oh, my gosh, out of nowhere, all of a
2 sudden we started seeing problems. They want you to
3 believe they never saw those problems before.

4 The evidence does not support their view of
12:53:22 5 the case. Let's go through some of it.

6 I'm going to show you that for about the
7 five or six months before Hodell went live, they were
8 testing their custom software along with Business One at
9 their offices. They were doing it for months. They
12:53:42 10 weren't involved at all. It was between Hodell and
11 IBIS/LSi. The evidence shows that over the course of the
12 months before they actually went live in March, '07, they
13 had planned and canceled go-live five times. Every time
14 for the same reason: Significant speed and performance
12:54:03 15 problems.

16 Hodell's attorneys told you that after go
17 live they couldn't complete sales orders, they couldn't
18 track their inventory. I'm about to show you e-mails
19 that show Hodell knew all of that way before they went
12:54:18 20 live. Let's take a look.

21 Here's an e-mail. It's between Kevin
22 Reidl, Hodell's president who, by the way, was in charge
23 of the project for Hodell, between Kevin and it's between
24 Jon Woodrum from IBIS/LSi.

12:54:36 25 Take in note the other e-mail addresses.

1 None of those people are from SAP. We're not told any of
2 what's going on over the course of months before go-live.
3 That's undisputed.

4 Look what Jon Woodrum writes to Kevin. "We
12:54:54 5 know there is a performance issue to be satisfied before
6 go-live. And we know that it lies in and with the
7 In-Flight add-on." Folks, that's what this case is
8 about, problems with their own custom In-Flight add-on.
9 And look at this, they knew about those problems way back
12:55:10 10 in November of '06. That's three, four months before
11 they go live.

12 It gets even worse. Keep going. This is
13 Kevin writing to other people at LSi, again no one from
14 SAP gets any of this, December of 2006, look what he
12:55:23 15 writes. The subject matter by the way, it's pretty
16 interesting. He's complaining about the sales order
17 process. That's exactly what Hodell said to you, "Oh,
18 after go-live we couldn't enter sales orders." Look at
19 this, they knew it before go-live. "The performance and
12:55:42 20 speed with In-Flight running is still not acceptable at
21 this point, particularly in sales order entry." I
22 couldn't enter a three-line order without being slowed
23 down or locked up." Months before go-live. Did they
24 call SAP? Did they send us an e-mail? No.

12:55:59 25 When did they get us, when did they call

1 us? After go-live. Let's keep looking at what more they
2 knew before they went live. And I'll tell you right now,
3 there are over a dozen documents like this and you're
4 going to see them all. This is just a sampling. Here's
12:56:17 5 one more.

6 January of 2007, this is Kevin Reidl, again
7 writing to Jon Woodrum at IBIS/LSi and again not sharing
8 any of this information with SAP, none of it was ever
9 shared with our folks. And look at what Kevin writes.
12:56:34 10 "Stress test." The evidence is going to be a stress test
11 is when you get your different users on your actual
12 system, on your own computers for a reason. The only
13 place you can really test software like this is in the
14 system, in the environment that you're going to run it.

12:56:53 15 Every environment is unique, and they were
16 testing it, and look what they write. "To our
17 disappointment, this one failed."

18 They go on, talk about process testing.
19 "This one also failed."

12:57:05 20 Kevin writes next to Item Number 3, "The
21 base SAP applications, they work fine." That's
22 consistent with his earlier e-mails. The problems aren't
23 with Business One. They're with In-Flight.

24 Look what he writes on the bottom. "I'm
12:57:24 25 not downplaying your project because they were

1 outstanding but I think we're behind from the eightball
2 from the beginning. That is I feel Otto and I made bad
3 decisions in approving status reports in this project
4 early on. We did not know what we were looking at and
12:57:42 5 thought the project was much further along than it was.
6 We released funds prematurely and did not stay on top of
7 the project at an early stage."

8 Folks, this is a good two, three months
9 before they actually go live. They never tell SAP any of
12:58:00 10 this at all.

11 What happens then? You're going to hear
12 testimony from Terry Phillips. I mentioned his name when
13 I went through the list of people. He's Hodell's own IT
14 manager. He's going to come in here and testify live.
12:58:15 15 And what he told us before, he'll tell us again. In the
16 days and weeks leading up to the March, 2007 go-live, he
17 told Kevin Reidl, "This somewhere is not working. It's
18 not performing efficiently. We should not go live.

19 Hodell's management ignored that advice,
12:58:33 20 didn't call SAP, and went live anyway.

21 To make matters worse, Hodell shoved its
22 old computer system, didn't keep it as a backup,
23 basically put it in a closet to collect dust. It's only
24 after all of that that Hodell finally, finally decides to
12:58:58 25 involve SAP.

1 Let's look at a little bit more. I promise
2 I'll have you out of here soon.

3 Go-live was March 7th, 2007. I want you to
4 see this e-mail. Kevin Reidl writing to Dan Lowery and
12:59:18 5 Jon Woodrum at IBIS/LSi right after go live. Look what
6 he's saying. "I've been promising my people all along
7 that we would not go live until the system was stable and
8 until the seed was acceptable. In all cases, I told them
9 a lie. The system was not stable." No, it wasn't. You
12:59:44 10 saw all those e-mails. "It is not running at acceptable
11 speeds." No, it wasn't, and they knew that for months
12 before.

13 So what happens next? They start pointing
14 fingers at us. Let's take a look.

12:59:58 15 They like to focus so much on e-mails from
16 Udi Ziv, and I told you I'd come back to them and here
17 they are. Now that you have the background, now that you
18 know the real context, take a look at what Mr. Ziv was
19 told. Take a look at the e-mail that was sent to him.
13:00:17 20 And by the way, the evidence is going to be, Mr. Ziv,
21 he's a developer, he's sitting in an office in Israel.
22 He had never heard the word "Hodell." He knew zero about
23 this project.

24 Out of the thin blue air comes this e-mail
13:00:32 25 from Dan Lowery who knew everything that was going on.

1 Look what Lowery writes to Ziv. "We went live on March
2 1st, 2007. "He's even got the go-live date wrong. "In
3 our experience, extreme system performance issues. Large
4 customer orders take two hours to enter into the system."

13:00:53 5 Well, we just heard Hodell's counsel tell
6 you even before Business One on their old software
7 system, large orders for Hodell would take hours. That's
8 what they were used to. He's making it sound like this
9 is something outrageous. He goes on. He says Hodell is
13:01:10 10 losing hundreds of thousands of dollars a month from lost
11 orders, lost customers and so on. Folks, they had just
12 gone live. We're going to prove to you Hodell has no
13 evidence of lost orders, lost customers, lost sales.
14 They were catastrophizing, they were making things sound
13:01:28 15 worse than they were, and they weren't telling Mr. Ziv or
16 anybody else at SAP what was really going on. You'll
17 have these e-mails later. You'll get to look at all of
18 them. Ask yourselves was Hodell and IBIS/LSi telling SAP
19 about all the testing and failed testing that Hodell saw
13:01:47 20 itself before it went live? The answer is no.

21 Hodell suggests to you that Mr. Ziv's
22 reaction when he said this is outside the Sweet Spot was
23 not shared and it was kept internally. That's also not
24 true. Take a look at this. This is April 13th, 2007.
13:02:08 25 Ziv writes back to Lowery at IBIS/LSi and he tells him

1 exactly what he said in his other e-mail. "As you know,
2 this customer's environment is far outside the Sweet
3 Spot." That was his initial candid reaction. And he
4 told it to Hodell and to IBIS/LSi.

13:02:25 5 Hodell, during its opening, said there was
6 a call on April 17th. Indeed, there was. It was between
7 folks from SAP, people from Hodell, and people from
8 IBIS/LSi. Let's take a look at some of the details of
9 that call.

13:02:42 10 Geoff Ashley, one of SAP's witnesses, wrote
11 a report in an e-mail after that call. Here it is. He's
12 going to explain his e-mail. What he documents here is
13 for the first time on April 17th of 2007, a full month
14 after go-live, SAP is told for the very first time that
13:03:06 15 Hodell believes it wants a system with up to 500 users
16 and the reaction from the SAP team, it's right there,
17 there was stunned silence. Stunned silence.

18 That's the first time we were ever told
19 anything like that.

13:03:21 20 He goes on. He's talking about Dirk
21 Boessmann who Hodell's counsel mentioned. He said Dirk
22 Boessmann did an excellent job under stressful
23 conditions. He set the expectation but this environment
24 is much larger than we were led to believe and indeed the
13:03:37 25 evidence will support that. Now, Hodell says it wasn't

1 told by SAP what we really thought. Take a look at Otto
2 Reidl's own notes from this same call. Zoom in on this
3 one section. Conference call, April 17th, 2007. "Dirk
4 thinks we are at high end of system capability." They
13:03:57 5 discussed it.

6 Mr. Reidl wrote it down in his own words.

7 The other SAP people who were on that call,
8 they'll tell you what they remember being discussed. SAP
9 was open and it was candid.

13:04:08 10 Ladies and gentlemen, the evidence is also
11 going to show that over the coming months, as SAP started
12 to gather information and realized what had really been
13 going on here, we didn't run and hide. We answered their
14 calls and we devoted significant resources to help them
13:04:28 15 fix their own custom software. We installed what are
16 called patches. If you have your own computer at home,
17 sometimes you see a little thing pop up and it says
18 "Update your Microsoft software." That's the same thing
19 as a patch.

13:04:41 20 It's a little program that fixes certain
21 things.

22 The evidence is going to be that by May of
23 2007, SAP implemented patches for Hodell that made a 50%
24 performance improvement. By September of 2007, there
13:04:57 25 were reports that the next patch made a 500% improvement.

1 And ultimately, you're going to hear from a
2 witness named Eddie Neveux, he's a technical guy from
3 SAP, he went out to Hodell's location in October of 2007.
4 He spent a full day sitting with Hodell's actual users,
13:05:19 5 meeting with Kevin Reidl to figure out what problems or
6 complaints they might have still had, and Mr. Neveux
7 wrote a report. He noticed nothing wrong. At worse, he
8 reported one process had a nine-second delay.

9 He watched people enter sales orders all
13:05:39 10 day, no problems. He'll tell you, he left that meeting
11 feeling there was nothing wrong really at all.

12 I'm going to wrap up. Last topic is
13 Hodell's claim for damages. They didn't really tell you
14 much of the details. I'm sure you'll hear things
13:05:58 15 throughout this case. Let me make a couple of
16 highlighted points.

17 Hodell ran our software for two years.
18 Thank you. Here's what you would see if you took a look
19 at Hodell's actual financial records.

13:06:15 20 MS. LUARDE: Your Honor, I apologize, I'm
21 going to object to this because of the earlier
22 conversations regarding damages.

23 THE COURT: Overruled.

24 Go ahead.

13:06:22 25 MR. STAR: If you had Hodell's actual

1 business records in your hand here's what you'd see. If
2 you looked at their average gross profits over a two-year
3 period, 2005 and 2006, the two years before they ran
4 Business One, they did 8.9 million. 2007-2008 while they
13:06:43 5 ran our software, average gross profits were up. What
6 happened when they switched over? Boom, ten.

7 What did they tell -- oh, and by the way,
8 let me not forget this, this is raw data from Hodell.
9 This is their annual gross sales. And if you break it
13:07:00 10 down year-to-year, the only full calendar year they ran
11 Business One was 2008. Look at those numbers. 43.8
12 million, almost 43.9, by far the most sales they had.
13 And look what happened after they went off our software,
14 they tanked.

13:07:17 15 And what did they tell their next software
16 provider? Hodell tells you they switched off our
17 software in April of 2007. Look at this e-mail, folks,
18 from Kevin Reidl on December 19th -- I'm sorry -- they
19 switched off our software in April of 2009. I think I
13:07:36 20 misspoke.

21 Look at this e-mail from December of 2009
22 to the next software provider. He's saying, "Hey, what
23 happened to our weekly calls? We don't know where to go
24 or what to do to get this project closer to completion.
13:07:53 25 Get this one. I was advised yesterday that there has

1 been a negative \$200,000 impact in bottom-line profits
2 directly related to our historical low levels of
3 productivity since going live on this software on April
4 1st, 2009."

13:08:12 5 Same complaints they made against IBIS/LSi
6 back in 2001 and 2003, the same complaints they now lodge
7 against SAP, are the same complaints they made against
8 their next software provider.

9 Folks, when you consider all the evidence,
13:08:36 10 we think you'll find that SAP did nothing wrong here. We
11 had no contact with Hodell. We made no false statement.
12 We had no intent to mislead Hodell.

13 When you consider all the evidence, we'll
14 ask that you return a verdict in favor of SAP.

13:08:48 15 Thank you for your time.

16 THE COURT: Thank you, Mr. Star.

17 Well, can you take that down? Thanks,
18 guys.

19 Okay. That concludes your morning and
13:09:07 20 beginning of the afternoon presentation. We'll recess
21 for lunch time. It's -- what time is it? Ten after
22 1:00. Well, we'll give you an hour and a half so we'll
23 meet on L-1. Where do you meet, Mr. Panigutti?

24 A JUROR: L-1.

13:09:28 25 THE COURT: That's downstairs where you met

1 this morning. And let's see, 2:25. Is that about right?
2 Give you -- does that sound right, Sean?

3 A JUROR: Yeah. Whatever you want.

4 THE COURT: I know. But, I'm asking you,
13:09:48 5 right?

6 Anyway, you still haven't heard any
7 evidence, have you? You've heard the opening statements
8 of the lawyers.

9 Enjoy lunch. You can go wherever you
13:09:58 10 please, and as long as you're back here on L-1 about
11 2:25, we'll call down there and bring you back up and
12 you'll hear your first witness this afternoon.

13 So keep in mind the admonition I've given
14 you about not forming or expressing an opinion and
13:10:15 15 certainly don't talk with anyone or amongst yourselves
16 until everything is given to you.

17 So refresh yourselves and we'll see you
18 this afternoon.

19 (Jury out).

13:11:02 20 (Luncheon recess taken).

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1 MONDAY, JUNE 15, 2015, 2:29 P.M.

2 THE COURT: All right. Be seated, folks.

3 You may call your first witness.

4 MS. LUARDE: Your Honor, before we call our
14:34:20 5 witness, we just wanted to raise that Mr. Lowery, who is
6 a party to the action with LSi, is sitting in the back of
7 the courtroom.

8 We believe he's entitled to still stay.

9 THE COURT: Yeah. He's not a party

14:34:34 10 anymore.

11 MS. LUARDE: That's correct.

12 THE COURT: Okay.

13 MS. LUARDE: That's why we are raising the
14 issue, Your Honor.

14:34:41 15 MR. STAR: Your Honor, we think he ought to
16 be sequestered.

17 THE COURT: Do I look confused? Come on,
18 why don't you say no?

19 He may stay.

14:34:57 20 Come on, you've got to be a little bit
21 quicker. I'm not supposed to be confused.

22 MR. CARNEY: Your Honor, Hodell calls Kevin
23 Reidl to the stand.

24 THE COURT: Kevin, would you just raise
14:35:18 25 your right hand up here?

1 KEVIN REIDL,
2 of lawful age, a witness called by the plaintiffs,
3 being first duly sworn, was examined
4 and testified as follows:

14:35:24 5 THE COURT: Please have a seat.

6 Now, Kevin, would you tell us your full
7 name and spell your last name?

8 THE WITNESS: Sure. Kevin Reidl, my last
9 name is spelled R-E-I-D-L.

14:35:47 10 THE COURT: Thank you.

11 DIRECT EXAMINATION OF KEVIN REIDL

12 BY MR. CARNEY:

13 Q. Mr. Reidl, where do you reside?

14 A. My wife and family and I reside in Hinckley, Ohio,
14:35:54 15 just south of here in Medina County.

16 Q. And for how long have you lived there?

17 A. Nine years now.

18 Q. How long have you been a resident of northeastern
19 Ohio?

14:36:03 20 A. I'm sorry. Can you speak up a little bit more?

21 Q. How long have you been a resident of northeastern
22 Ohio?

23 A. My whole life, with the exception of a couple years
24 after college, I worked in Michigan.

14:36:16 25 Q. Can you briefly describe your educational

1 background?

2 A. Sure. I attended the University of Cincinnati
3 where I earned a Bachelor's in business, and then later
4 attended Case Western Reserve on the east side here where
14:36:29 5 I earned a bachelor -- masters in business.

6 Q. And where do you currently work?

7 A. I work at Hodell-Natco Industries in Valley View.

8 Q. And what's your position?

9 A. I'm the president.

14:36:42 10 Q. And just briefly describe your duties as president.

11 A. I oversee the business operations, so sales
12 operations, accounting, administration, those sorts of
13 things.

14 Q. And how long have you been in that position?

14:37:01 15 A. For four years, since 2011.

16 Q. What other positions with Hodell have you had?

17 A. Two other positions.

18 I was general manager for a while, and then
19 I was promoted to executive vice president, and that was
14:37:20 20 just prior to becoming president.

21 Q. And where is Hodell headquartered?

22 A. We're headquartered in Valley View, Ohio just down
23 the road.

24 Q. Now, is it a family-run business?

14:37:34 25 A. Yes, it is.

1 Q. How long has the current ownership of Hodell been
2 in place?

3 A. Since 1983. My family, the Reidl family, as well
4 as the Rex family have owned it together.

14:37:48 5 Q. And Bill Rex, who is sitting here, is part of the
6 ownership group, correct?

7 A. Yes, he is.

8 Q. How many employees does Hodell currently employ?

9 A. About 130.

14:38:07 10 Q. And are all of these employees located in
11 northeastern Ohio?

12 A. No, not all of them in northeast Ohio. A little
13 over half in northeast Ohio.

14 Q. Where are the other people located?

14:38:21 15 A. We have branches in Houston, Texas, in St. Louis,
16 Missouri, in Orlando, Florida, Reno, Nevada and Columbia,
17 South Carolina.

18 Q. And are these warehouse distribution facilities?

19 A. Yes, they are.

14:38:35 20 Q. What is the business of Hodell-Natco?

21 A. Hodell-Natco is a wholesale distributor of
22 fasteners and chain products, so that's nuts and bolts
23 and screws and different variations of chain and hooks
24 and assemblies, things that are used typically for
14:38:58 25 construction or manufacturing.

1 Q. Now, as a distributor, do you purchase these
2 products from suppliers and then sell them to customers,
3 or do you manufacture the nut and bolts, screws and
4 chains that you've been describing?

14:39:19 5 A. We purchase them from manufacturers and warehouse
6 them, inventory them in our warehouses and then sell them
7 to our customers.

8 We don't manufacture them.

9 Q. Has Hodell-Natco grown since your family has been
14:39:32 10 involved in owning it?

11 A. Yes, it has.

12 Q. Can you describe --

13 A. Early on, when we first purchased it in '83, it was
14 probably two locations -- well, it was two locations, St.
14:39:46 15 Louis and Cleveland. And there may have been 30, 30
16 employees plus or minus five.

17 And it has since grown to six locations and
18 130 employees.

19 Q. At its peak, how many employees did Hodell-Natco
14:40:05 20 have?

21 A. At our peak, we had about 180.

22 Q. When would that have been?

23 A. Would have been kin 2007, 2008.

24 Q. Has Hodell-Natco's growth stagnated in recent
14:40:24 25 years?

1 A. Yes, it has.

2 Q. Why is that?

3 A. We've had difficulty doing acquisitions and
4 acquisitions was always a primary driver of our growth,
14:40:35 5 and so we haven't been able to do the acquisitions that
6 we would have liked to do because we don't have the
7 support of our bank to do those acquisitions.

8 Q. When you say acquisitions, what are you referring
9 to?

14:40:46 10 A. Acquiring other companies in our industry.
11 Typically they would be competitors. Sometimes in the
12 same city that we're in; other times in geographies and
13 cities that we're not currently in.

14 So they would be typically smaller
14:41:03 15 competitors that we would buy and make a part of our
16 organization.

17 Q. How many customers does Hodell have?

18 A. We have about 4,000 customers.

19 Q. And can you briefly describe the makeup of those
14:41:20 20 customers?

21 A. Sure. I mentioned earlier when I was talking about
22 our product lines that products are used for
23 manufacturing and construction, so most of our customers
24 are in manufacturing or construction, those industries.

14:41:36 25 So our customers may be bolting together

1 bridges or high-rise buildings like the one that we're
2 in, the steel structures that are associated with it, or
3 they may be assembling products. They may be assembling
4 vehicles, off-road vehicles or trailers or electrical
14:41:58 5 equipment, that sort of thing.

6 Q. How many suppliers does Hodell deal with?

7 A. About 4,000 -- I'm sorry. I said earlier that we
8 had 4,000 customers. We have about 7,000 customers;
9 4,000 suppliers.

14:42:18 10 Q. And how many inventory items does Hodell currently
11 have in stock?

12 A. Over a hundred thousand.

13 Q. And would that have been similar, would that have
14 been a similar count in the 2007-2008 time frame?

14:42:34 15 A. Yes. We would have been over a hundred thousand,
16 maybe 120,000 or thereabouts.

17 Q. Now, are you familiar with the term "SKU"?

18 A. Yes.

19 Q. What is an SKU?

14:42:50 20 A. SKU stands for stock keeping unit.

21 Q. Is that another way of saying inventory item?

22 A. Yes. It's an inventory item.

23 Q. Now, for a business like Hodell-Natco, is the
24 ability to manage and track your inventory an important
14:43:06 25 aspect of your business?

1 A. It's critical.

2 Q. Why?

3 A. Because our customers are relying on us to -- our
4 customers are relying on us to deliver those products to
14:43:18 5 them, and we need to know exactly what we have so that we
6 can fulfill that requirement for them.

7 So we need to know what inventory we have
8 where, and so that's why it's really critical. We've got
9 to be relying on our inventory.

14:43:34 10 Q. Can you describe for the Court the life cycle of a
11 typical customer order from the sales process to the
12 shipping process?

13 A. Sure. When we receive an order, it could be
14 comprised of one line or it could be comprised of 500
14:43:54 15 lines, depending on what our customers are ordering and
16 the complexity of their manufacturing or construction
17 type of activity.

18 So there could be many different line items
19 on an order. That order is entered by our sales team.
14:44:10 20 They would enter that order into our ERP system, and that
21 would then trigger the inventory so they could look up to
22 make sure that we had the inventory.

23 And our purchasing team would review to
24 make sure that we have the inventory on hand. If we
14:44:27 25 don't, they would buy the inventory that we needed to

1 fulfill that order.

2 And the order would then go into our
3 warehouse for fulfillment and shipping, and our warehouse
4 would then pick the order, package it, kit it, do
14:44:43 5 whatever they needed to do to prepare the order for
6 shipment and then ultimately ship it out to our customer.

7 Q. Are customer orders typically filled from the same
8 warehouse?

9 A. Typically, but not always.

14:44:58 10 There are times -- there are oftentimes
11 where we may fill, for example, eight out of ten lines on
12 an order from one warehouse and ship the other two lines
13 from another warehouse that happens to have those two
14 items in stock.

14:45:13 15 Q. So your computer software system, it is connected
16 to all of your various warehouse facilities across the
17 country?

18 A. Yes, it is.

19 Q. Okay. Now, I take it Hodell uses computer software
14:45:28 20 to run the day-to-day operations you're describing?

21 A. Yes, we do.

22 Q. How critical is your software management system to
23 your business?

24 A. It's very critical. It's really the life blood of
14:45:47 25 our -- of the operations.

1 We use it to conduct transactions, and
2 those transactions are to fulfill our customers' orders
3 and their requirements.

4 So the computer system allows us to conduct
14:46:03 5 all those transactions, manage the inventory, fulfill the
6 orders and that sort of thing. It's critical, especially
7 with as many customers and vendors and part numbers that
8 we have.

9 Q. Now, is the computer software system that you have
14:46:23 10 Enterprise Resource Planning Software?

11 A. Yes, it is.

12 Q. Otherwise known as ERP software?

13 A. Yes.

14 Q. Okay. And currently what type of ERP software does
14:46:31 15 Hodell utilize?

16 A. We utilize a product called Profit 21, and it's the
17 parent corporation, I believe, is Epicor.

18 Q. Prior to Profit 21, did Hodell use Enterprise
19 Resource Planning Software?

14:46:53 20 A. Yes, we did.

21 Q. What type of software did it use?

22 A. Immediately prior to Profit 21, I may refer to it
23 as P21, so excuse me. Immediately prior to Profit 21, we
24 used SAP Business One for a period of, I believe, two
14:47:13 25 years. And prior to that, we used a product called

1 FACTS, F-A-C-T-S, and we were on FACTS, we were using
2 FACTS for probably 15 years.

3 Q. When did you stop using FACTS ERP software?

4 A. In March of 2007.

14:47:33 5 Q. And when did you begin using Business One, SAP
6 Business One software?

7 A. The same time. I believe it was March 7th or March
8 8th of 2007.

9 Q. And when did you stop using SAP Business One?

14:47:47 10 A. In April of 2009, right around April 1st of 2009.

11 Q. Now, for example, with FACTS, did Hodell use an
12 outside software vendor to assist in the implementation
13 of FACTS in your workplace?

14 A. Yes, we did.

14:48:10 15 Q. Who did Hodell use?

16 A. A company called The IBIS Group.

17 Q. And what was the nature of Hodell's relationship
18 with The IBIS Group?

19 A. Dale Van Leeuwen was the owner and president of the
14:48:29 20 IBIS Group, and they provided the software to us.

21 And they were -- we worked closely with
22 them for the FACTS program.

23 Q. And how long was that business relationship with
24 The IBIS Group?

14:48:54 25 A. Approximately 15 years while we were using FACTS,

1 F-A-C-T-S.

2 Q. How would you describe Mr. Van Leeuwen's knowledge
3 of the fastener industry, specifically, and Hodell's
4 business in general?

14:49:13 5 A. Dale was intimately familiar with our business and
6 our operations and the functionality requirements we had
7 of software, and he was also intimately familiar with the
8 functionality requirements for our industry.

9 We weren't his only customer in the
14:49:32 10 industry using FACTS.

11 Q. Was there a time when you and your father were
12 upset with Mr. Van Leeuwen?

13 A. Yes. In 2003.

14 Q. What was the nature of the issue?

14:49:49 15 A. It was a product called Radio Beacon.

16 Q. What's Radio Beacon?

17 A. Radio Beacon was a product, it was also called
18 eWMS. You may hear both terms, but it's the same
19 product. It was a warehouse management system that
14:50:09 20 worked in conjunction with FACTS. And it was used
21 to -- for the transactions done in our warehouse. There
22 were inventory scanners, hand held scanners that the
23 pickers and receivers and stock movers used to scan and
24 move inventory around our warehouse. So that's what
14:50:32 25 Radio Beacon was.

1 Q. What specifically were your issues with
2 Mr. Van Leeuwen and The IBIS Group?

3 A. Well, Radio Beacon had significant inventory issues
4 between Radio Beacon and FACTS. And so in 2003, we were
14:50:52 5 frustrated that those hadn't yet been resolved.

6 Q. Did The IBIS Group have the resources necessary to
7 resolve the issue in a timely manner?

8 A. No. In our opinion they didn't.

9 They were struggling to get that resolved,
14:51:09 10 and we were quite frustrated with them, that we couldn't
11 get it resolved, and we voiced our frustrations with
12 them.

13 Q. Why did Hodell decide to migrate off of FACTS?

14 A. For a few reasons.

14:51:26 15 The scalability of the software, it wasn't
16 really scaleable to our growth.

17 Q. What do you mean by scalability?

18 A. So scalability by, meaning the number of users and
19 number of transactions and database transactions that
14:51:46 20 happen.

21 So as we grew, we typically added more
22 customers, more vendors, more items and naturally more
23 users that would use the system.

24 And so FACTS didn't have that -- the type
14:52:04 25 of growth and scalability that we were looking for, and

1 it also didn't have the kind of databases that we were
2 looking for, really the newer technology that we were
3 looking for in a product.

14:52:19

4 Q. And when did Hodell decide to migrate away from
5 FACTS?

6 A. We decided -- we made that decision in 2004.

7 Q. What ERP software system did you migrate to?

8 A. SAP Business One.

14:52:36

9 Q. Prior to moving to SAP Agent Business One, did you
10 look at any other ERP software programs?

11 A. Yes, we did.

12 We looked at -- we looked at Profit 21 back
13 then, the same product that we're on now.

14:52:54

14 We looked at a product called Take Stock,
15 which was sold by a company called the Aperum.

16 We looked at Navision. We looked at a
17 product called Computer Insights that was -- that was
18 fairly well-known in our industry.

19 So we looked at a number of other options.

14:53:12

20 Q. Were you involved in the selection of Business One
21 for Hodell?

22 A. Yes, I was.

23 Q. Can you describe your involvement?

14:53:29

24 A. I first got involved in late 2003, primarily
25 through discussions with Dale Van Leeuwen and discussions

1 with my father.

2 And subsequently, with Dan Lowery of LSi in
3 2004.

4 Q. Who was LSi?

14:53:49 5 A. LSi was Lowery Systems, Incorporated, and they were
6 a company that purchased The IBIS Group, Dale's company,
7 Dale Van Leeuwen's company. They purchased them in the
8 spring of 2004. I believe it was April or May of 2004.

9 Q. In connection with the selection of Business One,
14:54:16 10 did you go on any customer visits to see Business One in
11 real-time?

12 A. No, we didn't. We didn't see any, any companies
13 that were running Business One in real-time, no.

14 Q. Why was that?

14:54:31 15 A. Because I believe we were going to be the first in
16 our industry to be running Business One.

17 Q. What factors were important in selecting a
18 replacement software?

19 A. A number of factors.

14:54:54 20 Scaleability was another big one. We knew
21 we were growing and we were going to have more users on
22 the system, more inventory, more stock keeping units,
23 more customers, more vendors. So scaleability, we had to
24 have a product that would scale with us.

14:55:11 25 We need to have a product that had a robust

1 database that could grow with us, and a product that
2 could be flexible and customizable to our unique needs.
3 It had to be highly customizable so that we could meet
4 our customers' requirements because out of the box, some
14:55:36 5 software products don't have that.

6 So custom, customization was important for
7 us.

8 Q. Was Business One marketed as being customizable?

9 A. Yes, it was.

14:55:45 10 Q. Was going with SAP a factor that you considered?

11 A. I'm sorry?

12 Q. Was going with an SAP product a factor that you
13 considered?

14 A. Yes. Yes. It was -- SAP was, and still is, I
14:56:08 15 believe, a major player in the ERP sector. They are one
16 of the largest companies in that sector and they had a
17 very good reputation.

18 We were excited to hear that SAP was coming
19 into the small and middle market, and excited that they
14:56:28 20 were coming into our industry because they had a -- kind
21 of they were the gold label of ERP systems.

22 Q. What else did you do to investigate whether
23 Business One would be a good fit for Hodell?

24 A. I reviewed documentation and marketing literature
14:56:46 25 that was provided to us by SAP business partners, and I

1 spoke, had many conversations with Dale Van Leeuwen and
2 Dan Lowery as well.

3 Q. By that time, were you dealing with LSi?

4 A. Yes, we were dealing with LSi.

14:57:11 5 Q. Did you feel as though LSi had the resources to
6 assist you in choosing a new ERP software system?

7 A. I did. I mentioned earlier that we felt IBIS
8 didn't have adequate resources to meet our requirements.
9 Well, when they were bought by LSi, that was a good thing
14:57:34 10 for us because LSi did have the resources.

11 And so combining LSi and IBIS was a good
12 thing. LSi had the resources and the manpower, and IBIS
13 had the unique industry experience.

14 So that acquisition, IBIS -- LSi's
14:57:55 15 acquisition of IBIS, we viewed that very positively.

16 Q. By that time, was LSi an SAP Business One channel
17 partner?

18 A. Yes, they were. They became a channel partner, I
19 believe, in December of 2003.

14:58:18 20 Q. In 2004 did you view LSi and IBIS as one and the
21 same?

22 A. Yes. After the acquisition happened, we viewed
23 them as one and the same, yeah.

24 Q. What specifically were you being told by Mr. Lowery
14:58:31 25 and Mr. Van Leeuwen about the capabilities of SAP

1 Business One in that time frame?

2 A. We were told that it could grow with us to 300
3 users up to 500 users.

4 We told -- we were told that it was highly
14:58:51 5 customizable; that it could be customized to our unique
6 requirements. We were told that it had a strong database
7 that could handle the large data sets and large
8 transaction sets that we had, and that it could scale
9 with us and grow with us and would carry us into the, you
14:59:15 10 know, through the next 10 or 15 years of growth.

11 MR. CARNEY: Kim, could you please pull up
12 Exhibit 314?

13 Q. Mr. Reidl, you have in front of you Exhibit 314.

14 Could you please take a moment to identify
14:59:48 15 the document?

16 A. Yes. This is an SAP Business One brief.

17 Q. And is this one of the documents that you were
18 referring to in your prior testimony about having
19 reviewed?

15:00:01 20 A. Yes. I reviewed this.

21 Q. When I look through it, it appears to actually be
22 two pieces of marketing literature.

23 Is that accurate?

24 A. Yes. Am I able to scroll through or --

15:00:19 25 MR. CARNEY: Kim, could you please?

1 A. Yes. There's two pieces of marketing literature.

2 Q. Can you turn to Page 4 of the document?

3 A. Yes.

4 Q. Can you tell me who authored the document?

15:00:37 5 A. SAP AG.

6 Q. And when did you receive it?

7 A. Is this the first -- this is the first document?

8 Q. Yes.

9 A. We received this in 2003 at a -- I believe it was
15:00:55 10 at a trade show that my father attended, and he received
11 this at the trade show and shared it with me.

12 Q. Was there information in this document that you
13 considered important as it relates to Hodell looking at
14 SAP Business One as an ERP software solution?

15:01:10 15 A. Yes, there was.

16 MR. CARNEY: Kim, could you turn to Page 2
17 of the document?

18 MR. STAR: Your Honor, I just object to the
19 original version of the document.

15:01:28 20 THE COURT: Does it make any difference,
21 though?

22 MR. STAR: Pardon?

23 THE COURT: Does it make any difference?

24 MR. STAR: Well, I'm not sure what's going
15:01:34 25 to actually go to the jury here.

1 THE COURT: Well, we'll wait. We'll figure
2 that out.

3 MR. CARNEY: For the record, Your Honor,
4 it's an exhibit that's already been ruled on as admitted.

15:01:45 5 THE COURT: Okay.

6 MR. MILLER: The only confusion, Your
7 Honor, is that parts of this are highlighted and
8 underlined in red and we want to be clear the original
9 does not have highlighting or underlining in red.

15:01:57 10 And it looks like it's throughout the
11 document.

12 THE COURT: That's true.

13 MR. CARNEY: Well, just like you
14 highlighted all kinds of documents that you showed the
15 jury, we're doing the same thing.

16 MR. MILLER: That's fine. I just want to
17 be clear that that's correct.

18 THE COURT: Just a word to the wise that
19 whatever goes to the jury is not underlined, highlighted
15:02:17 20 and exclamation points and what not.

21 MR. CARNEY: If we can take a moment, Your
22 Honor, my computer screen's flashing on and off.

23 THE COURT: That's beyond my pay grade.

24 Maybe Kim can do it.

15:02:59 25 All your screens are working, right?

1 A JUROR: Yes.

2 THE COURT: All the ones are here, too.

3 MR. CARNEY: Thank you, Kim.

4 BY MR. CARNEY:

15:04:06 5 Q. Mr. Reidl, is there anything on Page 2 of Exhibit
6 314 that you've thought important in your decision-making
7 process?

8 A. Yes. It says, "SAP Business One provides robust
9 and fully integrated financial and sales management
15:04:23 10 capabilities, and it gives managers on-demand access to
11 critical real-time information for better
12 decision-making. The solution helps emerging businesses,
13 from those with 10 to several hundred employees, to
14 streamline their operational and managerial processes."

15:04:40 15 Q. At the time that you saw this document, did Hodell
16 fit within the employee parameters of the document?

17 A. Yes, we did.

18 Q. Turn to Exhibit 3 of the document, please.

19 Is there anything on this page that you
15:05:08 20 thought important?

21 MR. STAR: Objection. Leading.

22 THE COURT: Overruled.

23 A. Yes. It says, "Unmatched expertise -- because SAP
24 Business One is delivered through a network of highly
15:05:20 25 qualified channel partners who understand the specific

1 challenges facing small and mid size businesses,
2 customers receive world-class service and support."

3 MR. CARNEY: Can you turn to Page 5 of the
4 document, Kim?

15:05:46 5 BY MR. CARNEY:

6 Q. This document is identified as an SAP solution
7 brief, correct?

8 A. Correct.

9 MR. CARNEY: Kim, could you get to Page 5,
15:05:56 10 please?

11 MS. ANDERS: I'm there.

12 MR. CARNEY: I'm sorry. Why don't you
13 expand it? You were quicker than I thought.

14 BY MR. CARNEY:

15:06:21 15 Q. Mr. Reidl, was there anything on Page 5 of Exhibit
16 314 that you thought important as it relates to your
17 choice to go with SAP Business One?

18 A. Yes. It had -- it had similar terminology to the
19 last exhibit that we looked at.

15:06:42 20 It says, "Whether you have five employees
21 or 500, the solution helps emerging businesses streamline
22 their operational and managerial processes."

23 Q. And did Hodell fit within those employee
24 parameters?

15:06:54 25 A. Yes, we did.

1 Q. Now, starting with Page 5 of Exhibit 314, that's
2 the -- that actually starts the second piece of marketing
3 literature in this exhibit, correct?

4 A. Correct.

15:07:09 5 Q. Can you turn to Page 7 of the same -- of Exhibit
6 314?

7 A. Okay.

8 Q. Was there anything on Page 7 of this document that
9 was important to you in your decision-making process?

15:07:32 10 A. Yes. Again, the terminology, on unmatched
11 expertise, "Because SAP Business One is delivered through
12 a network of highly qualified channel partners and
13 supported by SAP's global resources, you receive
14 first-class service and support."

15:07:49 15 Q. And could you please turn to Page 8 of the same
16 document? At the bottom, could you highlight that?

17 I know it's difficult to see, but can you
18 let us know, Mr. Reidl, who published the document?

19 A. It says, "Copyright 2003 by SAP AG."

15:08:15 20 Q. Thank you.

21 MR. CARNEY: Kim, could you pull Exhibit
22 618 up?

23 BY MR. CARNEY:

24 Q. Mr. Reidl, could you take a moment and have Kim go
15:08:33 25 through the document, and can you identify it?

1 A. Okay. I've seen this before.

2 Q. Okay. What is it?

3 A. This is an SAP Business One Whitepaper that we
4 received from American Express who was in 2003 an SAP
15:08:57 5 Business One channel partner.

6 Q. Can you turn to Page 2 of the document?

7 Who is this document published by?

8 A. It says "Copyright, 2002, by SAP AG."

9 Q. And you may have said this, and I apologize if you
15:09:22 10 did.

11 Who did you receive this from and when?

12 A. We received this from American Express in 2003. It
13 would have been fall of 2003.

14 They were an SAP Business One channel
15:09:40 15 partner.

16 Q. Was there information in this document that you
17 considered important as it relates to Hodell's looking at
18 SAP Business One as an ERP solution?

19 A. Yes, there was.

15:09:55 20 MR. CARNEY: Kim, could you turn to Page 7
21 of the document?

22 Q. Mr. Reidl, I want to direct your attention to
23 Section 2.8 of the document.

24 Do you see that?

15:10:08 25 A. Yes.

1 Q. Is there anything in this paragraph that you
2 thought to be important in your decision-making process?

3 A. The whole paragraph really. It says, "To secure
4 critical business and system processes, a robust MS-SQL
15:10:29 5 2000 database is used. It supports an unlimited number
6 of simultaneous user transactions" and it goes on to say
7 that "its scalability provides for expansion of business
8 activities."

9 MR. CARNEY: Can you please turn to Page 18
15:10:55 10 of the same document, Kim?

11 BY MR. CARNEY:

12 Q. Is there anything on Page 18 of this document that
13 you thought to be important as part of your
14 decision-making process?

15:11:05 15 A. Yes. This, this section has similar terminology,
16 "To secure critical business and system processes, a
17 robust MS-SQL 2000 database is used. It supports an
18 unlimited number of simultaneous user transactions."

19 And again, it goes on to talk about "Its
15:11:27 20 scalability provides for expansion of business
21 activities."

22 Q. What did you understand, by 2004, what did you
23 understand the relationship was between SAP and LSi?

24 A. Between SAP and LSi?

15:11:45 25 Q. Yes.

1 A. Yes. LSi was a certified business partner for SAP;
2 that they had been -- had become that business partner in
3 December of 2003, and that they were representing LSi to
4 us. That they were representing SAP to us. And that
15:12:11 5 they would be working on delivering SAP Business One
6 to -- not only to us but to the fastener industry.

7 Q. Why did you think that?

8 A. Because they represented that they were a business
9 partner, and it was, frankly, very consistent with the
15:12:34 10 terminology that we saw in the marketing literature, that
11 it would be delivered through highly, highly qualified
12 channel partners.

13 Q. During the sales process, did you speak directly
14 with anybody at SAP?

15:13:02 15 A. No. It was -- it was represented by LSi they were
16 the channel partner. The literature said that
17 their -- the SAP product was being marketed and sold by
18 its channel partners.

19 Q. Did anyone from LSi, during the sales process,
15:13:26 20 discuss -- discuss with you SAP and their awareness of
21 the sale?

22 A. Yes. They told us that SAP had knowledge of the
23 sale; that they were working with SAP, and that they had
24 been fully qualified by SAP to become that channel
15:13:50 25 partner.

1 And so that was -- that was exciting to us.
2 I think I said it earlier, SAP was the big name brand
3 software, the gold standard of software, and so
4 their -- their reputation and product was being combined
15:14:09 5 with the expertise of LSi and IBIS.

6 And that was a pretty exciting development
7 for us.

8 MR. CARNEY: Kim, could you go to Exhibit
9 9?

15:14:25 10 BY MR. CARNEY:

11 Q. Mr. Reidl, could you please identify Exhibit 9?

12 A. Yes. This is a document from IBIS/LSi about SAP
13 Business One for the fastener industry.

14 Q. And that's the title of the document, correct?

15:14:43 15 A. Yes, it is.

16 Q. I see in the right-hand corner, upper portion of
17 the document, there's the SAP logo?

18 A. Yes. It says "SAP business partner."

19 MR. CARNEY: Can you turn to or pull up
15:15:06 20 Exhibit 11, Kim?

21 Q. Mr. Reidl, can you identify this document?

22 A. Yes. This is an overview and a proposal on the
23 purchase of SAP Business One from the IBIS/LSi.

24 Q. And again I note the SAP business partner logo?

15:15:28 25 A. Yes. It has the SAP business partner logo on it.

1 Q. Did you ultimately decide that Business One would
2 be a good solution for Hodell?

3 A. Yes, we did.

4 MR. CARNEY: Kim, can you pull up Exhibit
15:15:52 5 291?

6 Q. Mr. Reidl, could you identify this document?

7 A. This is a -- the development agreement between
8 Hodell-Natco and The IBIS Group, a wholly-owned company
9 of LSi.

15:16:08 10 Q. And what was the purpose of this document?

11 A. There's a couple of things. It was the purchase of
12 80 user licenses of SAP Business One. It was the
13 development of the In-Flight add-on, and it was -- talked
14 about the costs associated with the licenses and the
15:16:34 15 development.

16 Q. You heard Mr. Star in his opening state that Hodell
17 and LSi went into business together.

18 Do you recall that statement?

19 A. Yes, I recall that statement.

15:16:47 20 Q. And is that an accurate statement?

21 A. No, it's not.

22 Q. What was the nature of the relationship?

23 A. The relationship was that we were going to be the
24 first company in our industry on this product, the
15:17:02 25 product being SAP Business One with In-Flight.

1 And we were going to be the first user of
2 it in our industry, and we would be a reference account
3 for LSi and we would receive a small amount of commission
4 for them -- from them on future sales.

15:17:19 5 Q. And is that commission payment reflected in
6 Paragraph 3 on the second page?

7 A. Yes, it is.

8 Would you like me to read it?

9 Q. Sure.

15:17:44 10 A. It says, "Upon successful completion of the
11 development of In-Flight to SAP Business One, in
12 consideration for assisting in the initial funding of
13 In-Flight Enterprise, Hodell-Natco will receive a \$100
14 per user license fee for the first 1,000 users of
15:18:03 15 In-Flight, excluding Hodell-Natco users. Said license
16 fees are to be credited monthly against open Hodell-Natco
17 invoices, and any excess is to be paid out at every
18 month-end, until the \$100,000 level is attained."

19 Q. Did Hodell ever receive any money pursuant to that
15:18:22 20 paragraph?

21 A. No, sir.

22 Q. Also in Mr. Star's opening he made it seem like
23 Hodell was actively involved in the development of
24 In-Flight for Business One for Hodell.

15:18:38 25 Is that an accurate statement?

1 MR. STAR: Objection to form.

2 Argumentative.

3 THE COURT: Overruled.

4 A. No. We didn't -- we weren't a development company.

15:18:50 5 We were buying software from them, and when they
6 initially laid it out, they shared with us a roadmap of
7 what it would look like and gave us an idea of how it
8 would work and they would update us periodically, but we
9 weren't at all involved in the development. We
15:19:09 10 distribute fasteners, we don't develop software.

11 Q. Now, was Hodell's FACTS software system using
12 In-Flight as an add-on?

13 A. Prior to SAP, yes. In-Flight had been developed
14 for FACTS, and we had been using it for a number of
15:19:27 15 years.

16 Q. Okay. Now, with respect to Paragraph 4 of the
17 development agreement, that would be on Page 2 of Exhibit
18 291?

19 A. Yes.

15:20:01 20 Q. What was the purpose of that provision in the
21 development agreement?

22 A. That provision, it says, "In case of default by The
23 IBIS Group or LSi, due to bankruptcy or insolvency, SAP
24 has agreed Hodell-Natco will receive 80 user licenses of
15:20:21 25 SAP Business One from SAP for the balance payment to SAP

1 of \$120,000."

2 And so it -- it basically stipulated that
3 SAP was involved and that they would -- they would
4 provide 80 user licenses in the event that IBIS or LSi
15:20:43 5 went bankrupt, essentially.

6 Q. Was that an important provision for you?

7 A. It was, because it indicated that SAP was involved
8 in the process, they were backing this project, they had
9 awareness of the project, and like I said earlier, the
15:21:01 10 combination of SAP and IBIS was the important combination
11 for us.

12 And so this indicated that, yes, SAP was
13 backing them up on it.

14 Q. And this agreement was signed between Hodell-Natco
15:21:17 15 and LSi-Lowery Systems in December of 2004, correct?

16 A. Correct.

17 Excuse me, could I get some water? A lot
18 of talking.

19 MR. CARNEY: Kim, could you pull up Exhibit
15:22:02 20 252?

21 Q. Mr. Reidl, could you please identify Exhibit 252?

22 A. This document is a maintenance schedule and a
23 Business One software license agreement dated December
24 23rd, 2005.

15:22:30 25 Q. And you signed both agreements on behalf of

1 Hodell-Natco, correct?

2 A. Yes, I did.

3 Q. Now, who presented this -- these two documents to
4 you, the license agreement and the maintenance agreement?

15:22:46 5 A. LSi presented both of these, a gentleman named Tim,
6 and I can't remember his last name, but LSi presented
7 them to me.

8 Q. And when did you sign the documents?

9 A. On December 23rd of 2005.

15:23:06 10 Q. Turning your attention to Page 3 of Exhibit 252,
11 and specifically Section 4.1.

12 A. Okay.

13 Q. In a nutshell, can you describe what's stated in
14 this section?

15:23:26 15 A. In a nutshell, it says that SAP reseller is not the
16 agent of SAP and doesn't make representations of SAP.

17 Q. Did you have any concerns with this language?

18 A. Yes. I thought it was quite inconsistent with the
19 documentation that we had seen to that point, and

15:23:57 20 inconsistent in that it was actually presented to me by
21 LSi; not SAP.

22 Q. Up to that point, had LSi been making
23 representations to you about the -- about SAP Business
24 One?

15:24:12 25 MR. STAR: Objection. Leading.

1 THE COURT: Overruled.

2 A. Yes, they had, during the sales process and prior
3 to signing this agreement.

4 Q. Why did you sign the license agreement?

15:24:29 5 A. Well, we had just purchased 40 additional licenses
6 on top of the 80 that we had already purchased
7 previously, and so LSi sent this over and said we've
8 got -- this has to be signed for the 40 additional
9 licenses.

15:24:52 10 And so Tim from LSi sent it over, we had a
11 conversation, and we had to sign it. It was, you know,
12 by then we were over a year into this project. We had
13 invested almost \$300,000, \$275,000 into the original
14 Business One licenses and the development of In-Flight,
15:25:17 15 and so we were already a year in and were pretty heavily
16 invested, and, you know, and I was led to believe it
17 wasn't a negotiable document; that SAP, through LSi,
18 wanted it signed for those 40 additional licenses that we
19 had just purchased.

15:25:36 20 Q. Now, you would agree with me that both the
21 maintenance agreement as well as the license agreement
22 are agreements between Hodell-Natco and SAP America,
23 Inc., correct?

24 A. Correct.

15:25:57 25 Q. Is SAP AG a party to the license agreement?

1 A. No, it's not.

2 Q. At some point did you start using the
3 software -- well, strike that.

4 Did you start using the software right
5 after you signed the development agreement with LSi?

15:26:23

6 A. No, we didn't.

7 Q. Why not?

8 A. Because the development of In-Flight was happening
9 during that time period, and so that that development

15:26:38

10 work was expected to take somewhere around 18 months from
11 the time that we signed the development agreement and
12 bought the initial 80 licenses of SAP Business One.

13 So all the while this was -- all that
14 development work was happening.

15:26:54

15 Q. When you say the development of In-Flight, do you
16 mean the development of In-Flight specific to Business
17 One?

18 A. Yes, I do.

19 Q. Did Hodell know that when it purchased Business

15:27:13

20 One, it was going to take that amount of time to develop
21 In-Flight?

22 A. We knew it would take approximately 18 months, so

23 we knew there was a significant time between when we

24 first went into the agreement and when we would

15:27:36

25 eventually go live.

1 Q. Do I understand it correctly that In-Flight was a
2 software add-on that was customized for your industry?

3 A. Yes. In-Flight, as I mentioned earlier, had been
4 developed already for a product called FACTS, F-A-C-T-S,
15:28:03 5 that we had been using, and that was unique to our
6 industry.

7 And so In-Flight would be developed for the
8 SAP Business One foundational product. And so the
9 combination of In-Flight and SAP Business One would give
15:28:23 10 us the full -- full product that we were seeking, that we
11 were looking for.

12 Q. You've used the term "Highly customizable" on a
13 couple of occasions.

14 A. Right.

15:28:36 15 Q. In your testimony.

16 Do the add-ons provide that customization?

17 A. That's exactly what they are. They're
18 customizations. The base software was built such that
19 these add-ons could provide additional functionality for
15:28:58 20 a company or an industry, and that's exactly what
21 In-Flight was for us.

22 So that customization was a very important
23 piece of it, and In-Flight specifically was the
24 customization and add-on that would marry up and match up
15:29:12 25 with SAP Business One.

1 Q. You also made reference earlier in your testimony
2 to Radio Beacon.

3 A. Yes.

4 Q. What is Radio Beacon?

15:29:23 5 A. Radio Beacon is a warehouse management system and
6 it's used for wireless transactions between wireless
7 scanners happening in the warehouse.

8 So that was a third component that we were
9 looking for, and that would also be integrated, it was
10 already integrated into SAP Business One.

11 Q. So Radio Beacon had already been married up with
12 SAP Business One by other folks?

13 A. Yes. It had already been -- that integration had
14 already been developed elsewhere.

15:30:04 15 Q. And it wasn't done specifically for Hodell, was it?

16 A. No, it wasn't.

17 Q. At some point, was Business One available for
18 testing on your system at Hodell?

19 A. Yes, it was.

15:30:25 20 Q. Tell me how the testing process went.

21 How did it start?

22 A. Well, I think it started, it started at LSi
23 internally and then -- and then when it was installed on
24 our system, it would have been late 2006 so I want to say
15:30:46 25 December of 2006 is when that testing would have started,

1 and so we developed -- we purchased servers and hardware
2 to run this system, and so it was -- LSi installed the
3 software on those servers and that's where we did the
4 testing, if you will.

15:31:07 5 Q. How long did the testing on your servers take?

6 A. The testing probably took about three or four
7 months.

8 Q. Did all of the expected users at Hodell participate
9 in the testing?

15:31:26 10 MR. STAR: Objection. Foundation.

11 THE COURT: If he knows.

12 A. Yes. The users were testing the system. They, you
13 know, they were testing it. We were testing its
14 capabilities. They were using the test system for
15 training to practice their various functions and
16 transactions so they had all been using it, and we of
17 course had been doing -- running tests with them.

15:31:41 18 Q. How many users total would have been testing the
19 system at Hodell in this three or four-month period?

15:31:59 20 A. Anywhere between 60 or 70 and a hundred, depending
21 on, you know, that particular test and how many people
22 were in and available to use it.

23 Q. How did the testing go?

24 A. Well, it was -- it started off badly. The testing
15:32:19 25 went poorly. We were in communication with LSi about it.

1 They were -- they were involved in the testing every step
2 of the way. They were involved in it. They were on our
3 servers. They were watching the transactions.

4 So the testing went badly. We had, you
15:32:36 5 know, slow-downs and lockups and there were some
6 functional issues that weren't working.

7 Q. When the Business One was installed on your system
8 for testing, did you expect it to go smoothly right from
9 the beginning?

15:32:52 10 A. No, we didn't expect it to go smoothly.

11 It was, you know, we weren't surprised when
12 there were some hiccups because we knew some things
13 needed to be ironed out, and this was the first time that
14 In-Flight was running with SAP Business One.

15:33:09 15 Q. Now, did the hiccups as you described, did they
16 delay what has been referred to throughout this
17 litigation as the go-live date?

18 A. Yes, they delayed it numerous times, probably four
19 or five times that it was delayed because of testing.

15:33:31 20 Q. When we referred to the go-live date, what does
21 that mean?

22 A. Go-live is the date that all the users on the
23 computer system would start to use that new system, so in
24 this case, all of our users, all of our employees started
15:33:51 25 to use SAP Business One on March 7th of 2007 or may have

1 been March 8th. I can't remember specifically the date.

2 Q. And did Hodell delay the go live date until the
3 hiccups were resolved or at least manageable?

4 A. Yes, the reason we delayed it several times was
15:34:16 5 because, you know, when we tested, we experienced
6 hiccups, we experienced performance problems, and so LSi
7 was involved in that with us and they would review and
8 analyze the testing results and would make improvements,
9 and then we would later test it again.

15:34:32 10 And over time, those -- those issues were
11 slowly worked out and many of the issues were resolved.

12 MR. CARNEY: Kim, could you pull up Exhibit
13 227?

14 Q. Kevin, could you identify this document?

15:35:04 15 A. This is an e-mail from Jon Woodrum of LSi to myself
16 dated December 22nd of 2008.

17 Q. Actually that's 2006.

18 A. 2006, sorry.

19 Q. And what's being described in this e-mail?

15:35:24 20 A. Jon is describing how the testing has gone, how
21 they are preparing for go-live, and he says, "I feel we
22 are definitely going live January 8th."

23 Q. And did you, in fact, go live on the system on
24 January 8th, 2007?

15:35:47 25 A. No, we didn't.

1 Q. Why not?

2 A. Because it wasn't ready, because there were still
3 issues that had to be fixed and resolved, and it was
4 clear that we weren't ready at that time.

15:35:59 5 Q. Was that your call?

6 A. Yes.

7 Q. Moving further down into the document about a
8 paragraph later, it says, beginning with, "I think," do
9 you see that?

15:36:18 10 A. Yes, I do.

11 Q. What is Mr. Woodrum of LSi conveying to you in that
12 paragraph?

13 A. He says "I think we could and should plan to go
14 live even when dealing with less than what we really need
15 performance. If we know that within one to two months of
16 going live, a performance update can be planned on. We
17 have to have a workable response time to start, of
18 course."

19 Q. So what was he -- what was he actually saying to
15:36:51 20 you there?

21 A. He was saying that he feels we should go live even
22 though it may not be working optimally or if it's less
23 than ideal for go live.

24 Q. And did you disagree with that?

15:37:10 25 A. I did, which is -- which is why we didn't go live

1 on January 8th.

2 Q. Now, are you familiar with the concept of stress
3 testing an ERP software system?

4 A. Yes.

15:37:28 5 Q. What does that involve?

6 A. Stress testing is when you try to stress the
7 capacity of the system so you put as many users on the
8 system that you can, doing as many transactions that you
9 can on the system so that you can monitor the performance
10 of the system.

11 Q. And did Hodell stress test the system prior to
12 going live?

13 A. Yes, we did a number of times.

14 Q. And when you did these stress tests, how many users
15 were testing the system simultaneously?

16 A. Typically it would have been 60 to 100, in that
17 range.

18 Q. And how many of those stress tests did you conduct
19 prior to going live?

15:38:06 20 A. Probably four or five total.

21 Q. Did you follow anyone's recommendations in
22 performing the stress testing?

23 A. Yes, we were -- we were coached and advised by LSi
24 throughout the process on how to test it, what to test,
15:38:40 25 how many users to test, the length of time we should be

1 testing it, and those sorts of things.

2 MR. CARNEY: Now, Kim, could you pull up
3 Exhibit 299?

4 Q. Kevin, could you identify Exhibit 299?

15:38:59 5 A. This is an e-mail from myself to -- looks -- it's
6 to our team, Cleveland and Milwaukee office at the time
7 and we still do have someone working out of an office in
8 Milwaukee, so it would have been to a whole group of our
9 employees.

15:39:22 10 Q. Pardon me?

11 A. It would have been to a group of our employees.

12 Q. And what's the subject matter of the e-mail?

13 A. The subject matter is SAP stress test.

14 Q. And just briefly describe the content of the
15:39:40 15 e-mail.

16 A. I -- I explained to our team that we'll be doing a
17 stress test on the SAP tomorrow at 3:00 p.m., and I asked
18 everyone to log into SAP to test it for 30 straight
19 minutes.

15:39:56 20 And then I explained why we do the test,
21 and it says "The intent of this test is to make sure that
22 both the hardware and software can handle the load of all
23 the users doing their daily activities at the same time."

24 Q. Do you know a person by the name of Terry Phillips?

15:40:13 25 A. Yes.

1 Q. Who is he?

2 A. Terry is a former employee of ours that worked in
3 the warehouse and eventually worked on the Radio Beacon
4 product integration and implementation for us with our IT
15:40:35 5 team.

6 Q. In this e-mail, I don't see that he was copied
7 on -- copied on this e-mail, was he?

8 A. No.

9 Q. Okay. He was identified by Mr. Star in his opening
15:40:50 10 as Hodell's IT director at the time of this
11 implementation.

12 Do you recall him saying that?

13 A. I recall him saying that.

14 Q. Is that an accurate statement?

15:41:01 15 A. No.

16 Q. Who --

17 A. He wasn't our IT director.

18 Q. What did he do?

19 A. He worked primarily on the Radio Beacon product and
15:41:12 20 did some help desk support for us.

21 Q. Did he have any management function as it relates
22 to the implementation of Business One at Hodell?

23 A. No, he didn't.

24 But he would have been involved in the
15:41:30 25 stress testing. He would have been -- his e-mail would

1 have been one of the groups of employees that I sent this
2 out to, so he would have been participating in.

3 Q. He would have been a participant just like the 60
4 or a hundred other people that were participating in the
15:41:45 5 stress test?

6 A. Yes.

7 Q. Do you recall whether Mr. Phillips, or for that
8 matter, any other employee of Hodell-Natco ever told you
9 not to go live on B1 prior to in fact going live on March
15:42:08 10 7th, 2007?

11 A. I'm sorry. Can you repeat that?

12 Q. Sure.

13 A. A little louder.

14 Q. Do you recall whether Mr. Phillips, or for that
15:42:16 15 matter, any other Hodell-Natco employee who advised you
16 not to go live on B1 or Business One on March 7th, 2007?

17 A. No, I don't recall him or any other employee
18 telling me that.

19 Q. Would that have been something you'd remember?

15:42:37 20 A. I think I would, yes.

21 MR. CARNEY: Kim, could you turn to 55,
22 please, Exhibit 55?

23 Q. Mr. Reidl, could you please identify this e-mail?

24 A. Sure. This is an e-mail from Jon Woodrum to myself
15:43:04 25 and a few other folks at LSi dated Friday, January 12th,

1 2007.

2 It says, "Status," it's regarding status on
3 that particular day and to "Let you know."

4 Q. And the second point.

15:43:24 5 MR. CARNEY: Kim, could you highlight that?

6 Q. He's recommending that all efforts should be used
7 to go live by January -- on January 22nd, 2007.

8 Do you see that?

9 A. Yes, I do.

15:43:37 10 Q. And you didn't go live on that date, did you?

11 A. No, we didn't go live on January 22nd.

12 Q. And why? Why don't you?

13 A. Because it wasn't ready yet. We still -- there
14 were still some performance issues.

15:43:50 15 Q. At the time that you did in fact go live on the
16 system, did you -- did you feel comfortable with the
17 performance of Business One in the test setting?

18 A. For the most part, I felt comfortable with it, and
19 so when we went live, I felt that we had tested it, done
15:44:16 20 numerous stress tests, had spent four months testing it
21 and working with LSi on it, so it was -- it was -- we
22 were ready to go live.

23 Q. Now, were the problems that you experienced during
24 the testing fully resolved before you went live?

15:44:39 25 A. Not all of them, they weren't fully resolved.

1 They had dramatically improved over that
2 time period, but some of the issues lingered, had been
3 minimized, but still lingered.

4 Q. Why did you decide to go live then?

15:44:55 5 A. Well, first of all, LSi gave us their assurance
6 that those things that were still lingering, they were
7 going to work with SAP and get them resolved, and that
8 no -- you know, no implementation goes flawlessly and
9 there's no such thing as a hundred percent flawless
15:45:20 10 implementation, and I had come to realize that, yeah,
11 there would be -- there's no such thing as a perfect
12 go-live, a perfect implementation.

13 That we could expect some hiccups, and then
14 was assured by them that they were on it and that they
15:45:36 15 had SAP's backing as well to support it.

16 Q. Prior to going live on SAP Business One, were there
17 discussions with LSi about continuing to operate FACTS
18 parallel to Business One in the event there were issues
19 with Business One?

15:46:00 20 A. Yeah, we had -- yes, we had discussions with LSi
21 about that.

22 Q. And when -- and when I say "Run parallel to," what
23 do you understand that to mean?

24 A. Running parallel would mean that you have two ERP
15:46:17 25 systems running at the same time. So in this case, we

1 would be running SAP Business One for all our business
2 operations and our transactions at the same time that we
3 would be running FACTS, our old legacy system.

4 So it would mean that everyone had to
15:46:34 5 conduct their transactions and do their job in two
6 different systems at the same time.

7 Q. Was this a practical consideration to operate FACTS
8 parallel to Business One?

9 A. No. It was -- with the number of transactions and
15:46:50 10 the number of users and the number of sales orders and
11 items and all the transactions that we do on a daily
12 basis, thousands of transactions, you can imagine the
13 workload would have doubled for everyone.

14 So it's not practical to do 100% of our
15:47:09 15 work double.

16 Q. Was LSi in agreement with not running FACTS
17 parallel to Business One?

18 A. Yes. They were in agreement with us that it wasn't
19 a practical thing to do.

15:47:24 20 Q. What happened when Hodell went live on Business
21 One?

22 A. When we went live, we had performance issues right
23 out of the gate, severe slow-downs, a lot of lockups,
24 screen freezes, a lot of things weren't functioning
15:47:46 25 correctly.

1 So there was severe issues that touched
2 everyone, everyone that was using the system right off
3 the bat.

4 Q. Did it impact sales?

15:47:57 5 A. Sales?

6 Q. Yes.

7 A. Yes.

8 Q. Did it impact sales?

9 A. Yes, it impacted sales.

15:48:02 10 Q. Did it impact order entry?

11 A. Yes, it did.

12 Q. Tell us how.

13 A. When we receive a sales order or we're quoting on a
14 customer's requirements, those -- I think I mentioned
15:48:18 15 earlier that a quote or a sales order could be one line
16 or could be 500 lines and so we have to be able to move
17 through those items quickly.

18 And as you can imagine, if I was a
19 salesperson and I have to go through a 500-line quote, I
15:48:32 20 want to be able to look those items up quickly, type in
21 the quote, the price, look up the pricing, look up the
22 inventory on those things. So there's a lot of look-ups
23 that happen as you're going through the quote or going
24 through the sales order.

15:48:48 25 And so the way it impacted our sales

1 organization is that it became terribly slow for them to
2 go through this process.

3 So that entering a long order or a long
4 sales quote would take much more time than it ever did in
15:49:04 5 the past and they were severely hampered by this. They
6 were struggling to keep up with our customers'
7 requirements. They couldn't respond to our customers in
8 a timely manner, they were really stressed out and
9 struggling because our customers were being impacted by
15:49:21 10 this as well.

11 Q. Was Business One able to accurately track Hodell's
12 inventory?

13 A. No. No. We had inventory issues right out of the
14 gate as well. We couldn't -- we couldn't accurately
15:49:35 15 determine what we had in inventory, and as I said before
16 that inventory is really important to us because we've
17 got to be able to deliver it to our customers.

18 So, no, we couldn't accurately track our
19 inventory.

15:49:46 20 Q. How did that impact your business?

21 A. Well, we, over time, we had to increase those
22 inventory levels and repurchase items that we already had
23 somewhere. They were lost or misplaced or not tracked
24 accurately.

15:50:03 25 So we thought we had them and we would

1 quote them and we would enter an order or confirm an
2 order only to find out that we don't. And so we would
3 have to go buy additional inventory, bring it in, and
4 ship the order out, which would delay the order to the
15:50:18 5 customer and would dramatically impact our inventory
6 levels as well.

7 Q. Were there instances when you -- were there
8 instances where you ultimately found the inventory after
9 the fact?

15:50:39 10 A. Occasionally we would find it after the fact.
11 Sometimes we would like find it in a cycle count months
12 or even years later that had been misplaced by the
13 system.

14 So sometimes we never found it. We had to
15:50:53 15 write off a lot of inventory that we never did find.

16 We were -- we were in a mode of trying to
17 fulfill our customers' requirements, and take care of
18 them, and we had to scramble to do that, to bring on
19 inventory a lot.

15:51:12 20 Q. And so it's your testimony that these issues began
21 immediately?

22 A. Yes, they began as soon as we went live on the
23 system.

24 Q. And they were pervasive throughout your
15:51:22 25 organization?

1 A. Every -- every person in our -- almost every person
2 in our company touches the computer system and is
3 impacted by it in one way or another, so it impacted
4 everyone in the organization.

15:51:37 5 Q. Did you notify anyone of the problems you were
6 having with Business One?

7 A. Oh, yeah. We were -- we were in touch with LSi
8 immediately and in communication with them on the
9 problems.

15:51:51 10 We -- we -- you know, we asked them to come
11 on site. We did a lot of communicating with them,
12 conference calls. We talked to SAP directly in a
13 conference call. And I communicated directly to their
14 CEO, Bill McDermott. I felt it was my imperative to let
15:52:16 15 SAP know how important this is, and Bill McDermott was
16 the top guy. He's their CEO. And I decided I need to
17 communicate with him directly.

18 Q. Were you continuously updating LSi and SAP as to
19 the financial situation your company was dealing with?

15:52:39 20 A. Yes. We were in communication with them
21 frequently, and every day, every day we were in
22 communication with them.

23 LSi, more than SAP, but we were
24 communicating with them frequently. We wanted to let
15:52:56 25 them know how hard this was hitting us, how it was

1 impacting our business, how it was impacting our
2 employees. We had employees that were understandably
3 getting really stressed out about it.

4 MR. CARNEY: Kim, could you pull up Exhibit
15:53:09 5 59, please?

6 Q. Kevin, could you please identify this document?

7 A. This is an e-mail from Jon Woodrum to myself with
8 Dan Lowery copied in --

9 Q. I'm sorry?

15:53:31 10 A. Tuesday, March 8th, 2007.

11 Q. Thank you.

12 Now, I'm going to direct your attention to
13 the first e-mail in that chain that begins on the bottom
14 of the first page of Exhibit 59.

15:53:45 15 Do you see that?

16 A. Yes, I do.

17 Q. And is that an e-mail that you authored?

18 A. Yes. I wrote an e-mail to Jon Woodrum and Dan
19 Lowery.

15:53:58 20 Q. And that was on March 8th of 2007?

21 A. Yes, it was.

22 Q. What were you describing in those -- in this
23 communication?

24 A. I was describing that the system is -- that SAP is
15:54:14 25 locked up. That the entire system had locked up multiple

1 times the day before. And that we were locked up two
2 times on Monday and once on Tuesday. And that I was very
3 concerned about the constant lockups and saying that we
4 can't operate like this.

15:54:35 5 And it was -- I was communicating a sense
6 of urgency.

7 Q. How constant were the lockups that Hodell
8 experienced after going live?

9 A. They -- they happened often. The system, the
15:54:53 10 entire system would just lock up across the organization
11 so every user that was on it, it would just -- the whole
12 thing would just freeze and stop.

13 And usually it had to be rebooted so if you
14 were in the middle of a large order or some large
15:55:08 15 transaction, you had to do it all over again. So it
16 would lock up, freeze up every person in the
17 organization.

18 Q. Now, did these lockups subside after the first
19 couple of days?

15:55:24 20 A. No, they continued.

21 Q. For how long?

22 A. While we were on the product, so for two years.

23 MR. CARNEY: Kim, could you turn to Exhibit
24 60?

15:55:40 25 Q. Mr. Reidl, could you please identify this document?

1 A. This is an e-mail from myself to Dan Lowery with a
2 copy to Jon Woodrum, dated Tuesday, March 13th, 2007.

3 Q. And this is approximately a week after you went
4 live, correct?

15:55:58 5 A. Yes. About a week.

6 Q. Exhibit 59 was the next day you started contacting
7 them, correct?

8 A. Correct.

9 Q. And what were you conveying in Exhibit 13?

15:56:15 10 A. That -- that our people are stressed out. That
11 I've been telling our people that we would be managing
12 the software on one system, and I say in all cases I told
13 them a lie.

14 Q. What did you mean by that?

15:56:36 15 A. Well, it means that the system isn't -- wasn't
16 running stable and that it was not working. And I told
17 them that we would have a system that works, that would
18 manage our inventory, that would handle the transactions,
19 and it wasn't.

15:56:56 20 And so that's what I was communicating.

21 MR. CARNEY: Kim, could you pull up Exhibit
22 65, please?

23 Q. Now, this is an e-mail -- well, why don't you
24 identify it, please?

15:57:20 25 A. This is an e-mail from myself to Dan Lowery dated

1 Tuesday, March 20th of 2007.

2 Q. And attached to the e-mail are four pages of open
3 bugs.

4 Do you see that?

15:57:43 5 A. Yes.

6 Q. Was that four pages of problems with the system?

7 A. Yes. It's problems with the system.

8 Q. And just briefly, could you go to the second
9 paragraph of the first page of Exhibit 65?

15:58:06 10 MR. STAR: May I just object? This
11 document is not on the list that's been submitted to us,
12 as far as we understand.

13 THE COURT: Is it?

14 MR. CARNEY: As far as I know it is, Your
15 Honor.

16 THE COURT: Who is the expert in this?
17 Sharon?

18 MS. LUARDE: I believe I am. Let me check.

19 THE COURT: In the modern era, the lawyers
15:58:48 20 are required to turn all their information over well in
21 advance of the trial so there are no surprises or
22 anything like that.

23 That's done with the Judge previous to me
24 conducting all of those hearings on that.

15:59:05 25 MS. LUARDE: Actually I believe it is not

1 on our list, Your Honor.

2 THE COURT: Okay. Then you can go to
3 another exhibit.

4 MR. CARNEY: Thank you, Your Honor.

15:59:17 5 Kim, can you turn to Exhibit 68?

6 THE COURT: Shows you that the lawyers are
7 paying attention, though, doesn't it?

8 BY MR. CARNEY:

9 Q. Mr. Reidl, could you please identify this document?

15:59:38 10 A. This is an e-mail -- the top or the bottom e-mail?

11 Q. The top e-mail, the first e-mail on the first page
12 of Exhibit 68.

13 A. Okay. This is an e-mail from myself to Jon Woodrum
14 copying a couple of folks from LSi, my father Otto and my
15:59:56 15 brother Dan, dated April 13th, 2007 and it's regarding
16 follow-up to earlier conversations.

17 Q. And can you please read the second two sentences of
18 the first paragraph? Starting with "As you all know."

19 A. Okay. "As you all know the table-locks in SAP are
16:00:18 20 the major factor impeding our ability to conduct business
21 by a factor of 100 to 1, aside from the lockups happening
22 currently which Joe/Eric/Radio Beacon are working on.
23 Things are particularly dire in Reno and Houston. We've
24 lost one sales employee in Reno due to the strain. He
16:00:39 25 had been with the company for five plus years. Of course

1 we will move on, but we can't afford to lose any more of
2 our experienced people."

3 Q. Was this indicative of the stress your employees
4 were under?

16:00:51 5 A. Yes. We had -- we have a very -- I'm lucky to work
6 with a lot of conscientious people that care about their
7 work, that care about our business, and that care about
8 our customers.

9 And when they're not able to do that, they
16:01:03 10 understandably are concerned and they get stressed out.
11 And so, you know, in many cases people were working long
12 extra hours, weekends, just to keep up with the workload
13 and try to enter orders into the system.

14 And so people were getting stressed out,
16:01:22 15 and in this case the gentleman left us.

16 Q. Now, if we can, could we turn to Exhibit 84?

17 Can you please identify this three-page
18 document?

19 A. This is an e-mail from Dan Lowery to myself copying
16:01:47 20 a whole host of people dated 4/25/2007.

21 Q. Now, before we talk about the first e-mail of this
22 chain, why don't we start with the second e-mail, if you
23 will?

24 A. Okay.

16:02:03 25 Q. Who is the author of that e-mail?

1 A. I was the author of that. It was from me to, if
2 you can go to the next page, it was from -- from me to
3 Dan Lowery and it copied Otto Reidl and Gene Kratus.

4 Q. I'd like to focus your attention on the first
16:02:29 5 paragraph of -- what was the date of this e-mail, before
6 we start talking about it?

7 A. April 25th of 2007.

8 Q. Now, was this, was April 25th, 2007, after your
9 first communication with SAP?

16:02:46 10 A. Yes, it was.

11 Q. I'd like to direct your attention to the first
12 paragraph, okay, of your e-mail.

13 A. Okay.

14 Q. Could you please read it?

16:02:59 15 A. "We never heard back from you or SAP regarding the
16 large number of users we have in SAP Business One, and
17 whether that could be a factor in the performance
18 problems we are experiencing. In the conference call we
19 had last week, we were to hear back on this."

16:03:15 20 Q. Now, would that have been the April 17th, 2007
21 conference call you had with representatives of SAP and
22 LSi?

23 A. Yes, it would.

24 Q. Why don't you read Paragraph Number 2 of your
16:03:35 25 e-mail as well?

1 A. "What exactly is the range in number of users that
2 SAP Business One is designed for? We were told up to 500
3 users when we bought the package, but we heard in the
4 conference call that we were pushing the high end of the
16:03:50 5 package with approximately 115 users currently."

6 Q. Okay. Now, the first e-mail in this chain, on the
7 first page of Exhibit 84, is Mr. Lowery's response to
8 your e-mail, correct?

9 A. Yes, it is.

16:04:10 10 Q. And I note that he, among others, he has contacted
11 various representatives of SAP, correct?

12 A. Correct.

13 Q. That would have included Michael Sotnick, correct?

14 A. Correct.

16:04:30 15 Q. Rodney Seligman?

16 A. Correct.

17 Q. Udi Ziv?

18 A. Correct.

19 Q. Dirk Boessmann?

16:04:39 20 A. Correct.

21 Q. Paul Killingsworth?

22 A. Correct.

23 Q. And Geoff Ashley, correct?

24 A. Correct.

16:04:50 25 Q. Now, in the second paragraph of the e-mail

1 beginning with "My most recent," Kim could you -- he's
2 referring to a patch.

3 What's Mr. Lowery communicating to you in
4 this e-mail?

16:05:10 5 A. He had communicated with Dirk Boessmann in Germany
6 on an April 30th delivery of a Patch 21, barring
7 unforeseen issues.

8 And the Patch, those were various bug fixes
9 that they were delivering over time to fix the
16:05:31 10 performance problems and all the issues that we had.

11 Q. And how successful was Patch 21 in addressing the
12 issues you were having?

13 A. It didn't address them. We were still locking up
14 and still had system slow-downs.

16:05:47 15 Q. Now, going down to the fourth paragraph of
16 that -- of Mr. Lowery's e-mail, beginning -- starting
17 with the number of users for SAP Business One, can you
18 read that?

19 A. Sure. He was -- he was attempting to answer my
16:06:12 20 question on the number of users.

21 He says, yes, at the early stages, we all
22 started with Business One. The number most often quoted
23 for users was 250 plus. On the call, you correctly heard
24 Hodell was pushing the upper limit with 120. The
16:06:27 25 question is will that information result in improving the

1 product to allow Hodell and other customers experiencing
2 performance problems, the growth path that they expected?
3 Again this can only be answered by Dirk and Udi."

4 Q. Can you turn to Exhibit 85?

16:06:55 5 Can you identify the document?

6 A. This is an e-mail from Dan Lowery to myself and my
7 father, Otto, dated Wednesday, April 25th, 2007.

8 Q. So that's the same day as is -- as the e-mail that
9 is -- that we just talked about, Exhibit 84, correct?

16:07:16 10 A. Correct.

11 Q. I note that he did not copy any of the SAP
12 employees on this e-mail to you, correct?

13 A. Correct. It was just to myself and my father.

14 Q. And what's he communicating here?

16:07:31 15 A. He -- well, he says "I copied everyone except Bill
16 McDermott," and Bill McDermott is the CEO of SAP. At the
17 time, he was president of SAP America. And he says he
18 was asked not to copy him unless all else fails.

19 "That being said, he is aware of Hodell,
16:07:52 20 and I have no reservations to include him in the next
21 round."

22 He goes on to talk about the number of
23 users, and he said, "I used the user number 250 plus in
24 my reply for a reason, namely because even the most
16:08:08 25 protective SAP executive would agree they sold to that

1 number. The 500 number was also used but not as often.
2 However, no matter, if they could give us 250, that would
3 hold us for a while. If they cannot, we certainly have
4 the 250 in writing many times if we need leverage."

16:08:28 5 Q. Going on to the next paragraph with "We will," can
6 you start -- can you read that?

7 A. "We will start hearing replies tomorrow from my
8 e-mail. I suspect Dirk and Udi Ziv will supply a
9 statement to you and me on performance."

16:08:44 10 Q. And when he's referring to his e-mail, he's
11 referring to the exhibit we just talked about, 84,
12 correct?

13 A. Correct.

14 Q. And did Udi Ziv, Dirk Boessmann, or anybody else
16:08:57 15 from SAP ever respond to you, ever respond to Exhibit 84?

16 A. No.

17 Q. When did you first begin communicating with SAP
18 directly on the performance issues that you were
19 experiencing at Hodel?

16:09:17 20 A. On a conference call we had with them on April 17th
21 of 2007.

22 Q. Other than SAP, was there anybody -- other than SAP
23 representatives, was there anybody else on that call?

24 A. There was representatives from LSi as well, so LSi,
16:09:47 25 Radio Beacon, and SAP were all involved in that call.

1 Q. And what was the purpose of the call?

2 A. The purpose of the call was to get all the parties
3 on the phone to work out the issues that we were
4 experiencing because we -- it was urgent that we
16:10:05 5 start -- that we start to see performance issues. We
6 hadn't seen any. And these lockups and the performance
7 issues, they just continued, so I asked them all to get
8 on a call where we could say -- we could have a
9 discussion about what's going on and who's -- who's going
16:10:23 10 to get this thing fixed.

11 Q. During the call, did you make SAP aware of the
12 number of employees at Hodell that were currently using
13 the system?

14 A. Yes. I -- either my father or I indicated 115 or
16:10:40 15 120 employees, users.

16 Q. And did you explain on that call your plans for
17 growth and increase in the number of users over the life
18 of the system?

19 A. Yes, we explained that we had expected to grow to
16:10:54 20 300-plus users over the next ten years.

21 Q. And did you receive a response from SAP during that
22 call concerning your current user count and plans for
23 expansion?

24 A. No, we didn't.

16:11:10 25 Q. Well, let me take you back to Exhibit 84. Exhibit

1 84.2.

2 MR. CARNEY: Kim, could you pull it up?

3 Can you go to Paragraph 2?

4 Q. Kevin, could you look at Paragraph 2 and tell me if
16:11:55 5 that refreshes your recollection as to whether or not
6 there were any conversations about -- excuse me -- any
7 conversations about user count on that call, Hodell's
8 user count?

9 A. Yes. We -- we heard that on the conference call
16:12:17 10 that we were pushing the high end of the package with
11 approximately 115 users currently.

12 Q. Okay. Now, getting back to -- getting back to your
13 call with SAP and LSi on April 17th, 2007, did SAP seem
14 interested in working with Hodell to resolve the
16:12:39 15 performance issues your company was experiencing?

16 A. Yes, they did.

17 Q. Were efforts made to resolve the problem being
18 experienced by Hodell?

19 A. Yes. They -- they worked in conjunction with LSi
16:12:56 20 on various patches, patch releases, installing various
21 bug fixes and patch releases.

22 They came -- both parties came on site, LSi
23 more extensively than SAP, but they both came on site to
24 monitor, measure, analyze how the system was doing.

16:13:18 25 And, you know, we exchanged information and

1 tried to keep them in the loop.

2 Q. Did Hodell's employees make any efforts to help out
3 with this performance situation?

4 A. Well, they did what they could, and a lot of times
16:13:40 5 that meant they offered to work extra hours to get their
6 work done, many extra hours, and frankly, we found a lot
7 of work-arounds. Every person found work-arounds on how
8 to get things done.

9 And, you know, we found a way to get things
16:13:59 10 done. You know, despite the problems on the software, we
11 had -- we had to find a way to service our customers, and
12 so every employee was doing whatever they could to meet
13 our customers' requirements.

14 Q. Did the patches and the site visits and things of
16:14:18 15 that nature, did that go on for a period of days or
16 months?

17 A. Months. It would -- it was, you know, for probably
18 four to six months.

19 Q. Can you turn to Exhibit 69, please?

16:14:46 20 And can you identify this e-mail chain?

21 A. This is an e-mail chain from Dan Kraus to Michael
22 Sotnick on -- originally on Thursday, April 12th of 2007.

23 Q. Well, why don't we start with the first e-mail in
24 the chain, which is on Page 4 of the exhibit?

16:15:10 25 A. Okay. That, that e-mail is from Dan Lowery to Udi

1 Ziv, Dan Kraus, Paul Killingsworth, Michael Sotnick, and
2 Bill McDermott of SAP, their CEO.

3 MR. STAR: Your Honor, I object. Does he
4 have personal knowledge on that? He's not even copied.

16:15:28 5 THE COURT: Yeah, there isn't.

6 MR. CARNEY: Pardon me?

7 THE COURT: I say he has no personal
8 knowledge of this e-mail, he wasn't --

9 MR. CARNEY: He doesn't have personal
16:15:36 10 knowledge of the e-mail. It was something that was
11 produced in discovery, Your Honor. It is a document
12 that's already been pre-admitted by the Court, and we'll
13 certainly have witnesses to tie up this document.

14 THE COURT: You can ask somebody who got
16:15:52 15 this about it.

16 MR. CARNEY: Pardon me?

17 THE COURT: You can ask somebody who got
18 this e-mail about it; not this witness.

19 MR. CARNEY: Okay.

16:16:07 20 BY MR. CARNEY:

21 Q. Mr. Reidl --

22 A. Yes.

23 Q. -- did anybody from SAP ever tell you that 120
24 users was way outside a sane Business One Sweet Spot?

16:16:32 25 A. No, sir.

1 MR. STAR: Your Honor, I think they should
2 take the exhibit down off the screen.

3 THE COURT: Okay.

4 MR. STAR: Thank you.

16:16:53 5 BY MR. CARNEY:

6 Q. Mr. Reidl, did anybody from SAP ever tell you that
7 with 120 users and growing, Hodell was nowhere near a
8 Business One Sweet Spot?

9 A. No, sir.

16:17:25 10 Q. During your call on -- conference call on April
11 17th, 2007, did anybody from SAP tell you that Hodell
12 just has too much data; SAP Business One cannot handle it
13 and there is no fix in sight?

14 A. No, sir.

16:17:47 15 Q. Did anybody during that call on April 17th, 2007
16 say to you, "I believe we need to find a way to get the
17 customer off of SAP Business One"?

18 A. No, sir, they didn't.

19 MR. STAR: Your Honor, objection. This is
16:18:04 20 all leading.

21 THE COURT: Overruled.

22 Q. Did anyone tell you on that call that there was no
23 way Business One would work for this customer; we need to
24 find a way to move them on?

16:18:16 25 A. No, sir, they didn't.

1 Q. Did anybody tell you on that call that there's no
2 go-forward path here with Business One?

3 A. No, sir.

4 Q. Now, during that -- during that call on April 17th,
16:18:44 5 2007, did either you or your father ask the following
6 question: Did we buy the wrong solution with SAP
7 Business One?

8 A. Yes, my father asked that question.

9 Q. Did anybody respond to that question?

16:19:05 10 A. No.

11 Q. Did anybody tell you no, you didn't buy the right
12 solution with SAP Business One?

13 A. No, they did not.

14 Q. Did anybody, during that phone conversation, tell
16:19:43 15 you with a user count targeting 300 users, the system
16 will fail due to overselling?

17 A. No, sir.

18 Q. In May of 2007, did anybody from SAP tell you that
19 you're just wasting time and money with Business One?

16:20:25 20 A. No, sir.

21 Q. Did anyone at SAP on that call or thereafter ever
22 tell you that the issue with Hodell was that they start
23 with a data set that is well outside of the high end data
24 set that was ever tested for Business One in Israel?

16:21:03 25 A. No. No, they didn't.

1 Q. Did anyone around that time tell you for Business
2 One, 120 users and 400 concurrent database connections
3 overloads the Business One product?

4 A. No, they didn't.

16:22:03 5 Q. In that context, did anyone ever tell you never
6 expect a tiger to fly?

7 A. No, they didn't.

8 MR. CARNEY: Kim, could you pull up Exhibit
9 437?

16:22:39 10 Q. Well, before I ask you that question, before we go
11 to Exhibit 437, would you have liked to have known the
12 information that we've just now discussed on your call in
13 April of 2007 with SAP?

14 A. Yes, we would have liked to have known that.

16:23:00 15 MR. STAR: Objection.

16 THE COURT: Objection sustained.

17 MR. CARNEY: Kim, turn to Exhibit 437.

18 Q. Mr. Reidl, could you please identify this e-mail?

19 A. This is an e-mail from Paul Killingsworth to
16:23:35 20 myself, my father, copying Dan Lowery and himself, Paul
21 Killingsworth, dated May 14th of 2007.

22 Q. And Mr. Killingsworth is an employee of SAP?

23 A. Yes. At the time he was their senior manager of
24 customer relations.

16:23:56 25 Q. Okay. And I'll direct your attention to the second

1 paragraph of the document.

2 Can you read that to the jury?

3 A. "We believe that the results of these" -- well,
4 let me start at the beginning. "We have also been
16:24:18 5 working with Dirk and the development team to find and
6 address the source of the issues. We believe that the
7 results of these efforts will be substantially realized
8 in the PL23 release. Many hours of research and
9 development have culminated in the changes that will be
16:24:32 10 implemented in this next patch level."

11 Q. Now, what's being communicated to you in this
12 e-mail passage?

13 A. That the -- that a Patch Level 23 will be delivered
14 to us to improve the performance, the system performance.

16:24:50 15 Q. Now, Dirk is a reference to Dirk Boessmann,
16 correct?

17 A. Correct.

18 Q. And Mr. Boessmann was a participant in your
19 conference call on April 17th, 2007, correct?

16:25:01 20 A. That's correct. Yes.

21 Q. And he was part of the development team, correct?

22 A. Yes. He was one of the leaders of the development
23 team.

24 Q. And he reported to Udi Ziv?

16:25:12 25 A. I believe so, yes.

1 Q. Now, in the next paragraph, can you read the
2 second -- can you read the last two sentences of the
3 paragraph?

4 A. "Functionally, the product with the additions of
16:25:38 5 In-Flight and Radio Beacon is an outstanding business
6 solution for you and your company. The issue we face
7 today is solely the performance problem we are
8 experiencing at your installation."

9 Q. What's he -- what's he conveying to you there?

16:25:50 10 A. He's saying that the functionality of the
11 product -- and he's describing the product as SAP
12 Business One with the additions of In-Flight and Radio
13 Beacon -- that it's a great business solution for us and
14 our organization.

16:26:15 15 MR. CARNEY: Kim, could you turn to Exhibit
16 89?

17 Q. Kevin, could you please identify Exhibit 89?

18 A. This is an e-mail from Paul Killingsworth to myself
19 copying my father and a number of people from LSi and
16:26:40 20 SAP, dated June 6th of 2007.

21 Q. And what's Mr. Killingsworth communicating to you
22 in this e-mail?

23 A. He is communicating that we're a very important
24 customer to SAP and that they have great cause for
16:27:04 25 concern. We know this has been a difficult time for us

1 and our employees. And then they go on to talk about the
2 performance improvements in SAP Business One 2007-A. It
3 says as Dirk Boessmann mentioned in our last call
4 together, performance improvements were a high priority
16:27:26 5 in this release."

6 And later it says, "Nonetheless, it is
7 reasonable to believe that you will experience
8 significant performance improvements in many areas with
9 SAP Business One 2007-A when it is implemented at
16:27:39 10 Hodell-Natco."

11 Q. And did you?

12 A. No. We didn't install 2007.

13 Q. Why not?

14 A. Because it wasn't available to customers. It was
16:27:53 15 being tested, and it wasn't being delivered to customers.
16 And the version we were on never worked. It had
17 performance improvements and lockups, and eventually we
18 went off of it.

19 THE COURT: Mr. Carney, is this a good time
16:28:21 20 to stop you?

21 MR. CARNEY: I'm getting close, Your Honor,
22 but this is a good time.

23 THE COURT: I mean, you say "Close." What
24 does that mean?

16:28:28 25 MR. CARNEY: This is a good time to stop.

1 (Laughter)

2 THE COURT: Okay. You had your first vote
3 from the jury on that one.

4 All right, folks, that will conclude our
16:28:40 5 testimony for today. You've had a long day so keep in
6 mind the admonition that I have given you. Go home
7 tonight. Those near and dear to you will be very curious
8 as to what your day was all about.

9 Just tell them you've been selected to sit
16:28:53 10 as a juror on a case. Don't mention whether it's civil
11 or criminal. Say that you've taken an oath not to
12 disclose anything or talk about anything until the case
13 has been resolved and you have reached a verdict here in
14 open court, and have them honor that oath.

16:29:06 15 So enjoy the evening. Relax. We'll meet,
16 Mr. Panigutti, where?

17 A JUROR: L-1.

18 THE COURT: L-1.

19 A JUROR: At what time?

16:29:17 20 THE COURT: 8:15. How does that sound?
21 And then Jeanie will have rolls all set for you or no?
22 Coffee or tea. We will have that at least for you.

23 A JUROR: Is it going to be 4:30 always?

24 THE COURT: Pretty much so, yeah. I'm
16:29:34 25 going to try to do that for you.

1 A JUROR: Okay. That would work.

2 THE COURT: Well, then 4:30 it is. How is
3 that? All you have to do is ask.

16:29:43

4 I could go for that but we may be here
5 forever. You never know.

6 All right. Have a good night. We'll see
7 you first thing.

8 (Jury out).

9 (Proceedings adjourned at 4:30 p.m.)

16:58:20

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11 C E R T I F I C A T E

12 I certify that the foregoing is a correct
13 transcript from the record of proceedings in the
14 above-entitled matter.

15

16

17

18 **/s/Susan Trischan**

19 /S/ Susan Trischan, Official Court Reporter

20 Certified Realtime Reporter

21 7-189 U.S. Court House

22 801 West Superior Avenue

23 Cleveland, Ohio 44113

24 (216) 357-7087

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I N D E X

WITNESSES:

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DIRECT EXAMINATION OF KEVIN REIDL

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BY MR. CARNEY

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